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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 830)

Supreme Court of the United States

OCTOBER TERM, 1947

No. 10

SCHINE CHAIN THEATRES, INC., ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

FILED OCTOBER 4, 1946.

SUPREME COURT OF THE UNITED STATES

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

VOL. I

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387	Letter dated January 28, 1938 from Nate Sauber, Branch Manager, to G. V. Lynch, Schine Enterprises Corp.	6112	3898
388	Letter dated February 1, 1938 from W. B. Kraemer to F. J. A. McCarthy, Universal Film Exchanges, Inc., Rockefeller Center, N. Y.	6113	3899
389	Letter dated February 7, 1938 from P. T. Dana, Branch Manager, to A. J. Herman, District Manager.	6114	3899
390	Letter dated February 15, 1938 from L. Goldstein, Schine Circuit, Inc., to Nate Sauber, Buffalo, N. Y.	6116	3901
391	Inter-office letter dated November 14, 1938, from Paul Baron, Acting Branch Manager, Washington, to A. J. Herman, Home Office	6117	3901
392	Letter dated December 14, 1938 from F. J. A. McCarthy to Paul Baron, Washington Exchange	6118	3902
393	Cancellation or Alteration of Contract dated December 15, 1938, Roxy Theatre, Corbin, Kentucky; also Contract dated January 13, 1939, Hippodrome and Kentucky Theatres, Corbin, Ky.	6119	3902
396	Inter-office letter dated May 23, 1939 from John J. Scully, Branch Manager, to F. J. A. McCarthy, Eastern Sales Manager, Home Office; also attached memorandum dated May 19, 1939 from F. J. A. McCarthy to J. J. Scully, Buffalo, Exchange	6120	3903
397	Letter dated June 8, 1939 from B. B. Kreisler, Branch Manager, Washington, to F. J. A. McCarthy, Eastern Division Manager	6123	3905
409	Letter, P. T. Dana to Frank McCarthy, September 23, 1935	6124	3907
412	Letter of September 10, 1932 from G. V. Lynch, Schine Enterprises, Inc., Gloversville, N. Y., by Jack E. Flynn, MGM Corp., Detroit, Michigan	6125	3907
413	Letter of September 12, 1932 from Jack E. Flynn, MGM to Cincinnati, Ohio, branch office, and Geo. V. Flynn, Schine Enterprises, Inc., Gloversville, N. Y.	6126	3908
424	Inter-office memorandum on MGM Distributing Corp. letterhead, dated October 13, 1933 from E. K. O'Shea to W. F. Rodgers	6128	3909

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		Original	Print
425	Letter dated October 21, 1933 from G. V. Lynch to Jack Flynn	6129	3910
426	Inter-office memorandum on MGM Distributing Corp. letterhead, dated January 4, 1934, from Ralph Pielow to J. E. Flynn	6130	3911
430	Inter-office memorandum on MGM Distributing Corp. letterhead, dated August 1, 1935, from Ralph Pielow to J. E. Flynn	6131	3912
433	Letter dated August 26, 1935, from G. V. Lynch to Ralph Pielow	6132	3913
435	Letter dated September 27, 1935 from G. V. Lynch to Ralph Pielow	6133	3913
441	Unsigned letter (WFR) to G. V. Lynch dated February 7, 1936	6134	3914
444	Inter-office memorandum on Metro-Goldwyn-Mayer Distributing Corporation letter head, dated June 15, 1936, from E. K. O'Shea to J. E. Flynn	6135	3915
455	Inter-office letter dated August 28, 1937 (E. K. O'S) to E. M. Booth	6136	3916
456	Inter-office memorandum dated August 30, 1937, from E. M. Booth to E. K. O'Shea	6137	3917
457	Unsigned letter dated September 1, 1937 (EKO'S) to E. M. Booth	6138	3918
459	Inter-office communication dated November 1, 1937 from E. M. Booth to E. K. O'Shea	6139	3919
476	Letter dated July 13, 1938, G. V. Lynch to Ralph Maw, Buffalo, New York	6140	3920
488	Inter-office memorandum dated May 15, 1939, from R. W. Maw, Buffalo, New York to E. K. O'Shea	6141	3920
491	Inter-office memorandum dated June 8, 1939, from W. F. Rodgers to T. J. Connors	6143	3923
494	Inter-office memorandum dated November 7, 1935, from Ralph Pielow to J. E. Flynn, Detroit, Michigan	6144	3924
496	Letter dated February 28, 1936, from E. W. Aaron to Ralph Pielow	6145	3925
497	Inter-office memorandum from Ralph Pielow. Albany, New York, to J. E. Flynn, Cincinnati, Ohio, dated November 30, 1936	6146	3925
499	Letter from Mr. G. V. Lynch, Schine Theatre Enterprises, to Mr. F. Drew, Metro-Goldwyn-Mayer Pictures, Cleveland, Ohio	6147	3926
500	Telegram, G. V. Lynch to J. E. Flynn, Metro-Goldwyn-Mayer Pictures, at Detroit, Michigan	6148	3927
509	Memorandum from E. W. Aaron, Loew's, Inc., to W. F. Rodgers, dated August 2, 1938	6149	3927
510	Letter, W. F. Rodgers to T. J. Connors dated July 29, 1938	6150	3928
511	Letter, T. J. Connors to Essick and Fine, dated December 7, 1938	6151	3929

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
518	Inter-office memorandum dated September 16, 1932, from C. R. Halligan, Branch Manager, Albany, to E. L. McEvoy, Home Office	6152	3929
519	Inter-office letter, dated October 17, 1933, from C. R. Halligan, Branch Manager, Albany, N. Y., to E. L. McEvoy, Home Office	6155	3932
520	Agreement, dated September 22, 1933, between the Schine Theatrical Co., Inc., and the RKO Distributing Corp	6157	3933
524	Agreement, dated October 29, 1934, between Schine Theatrical Co., Inc., and RKO Distributing Corp.	6158	3935
526	Inter-office letter from H. T. Dixon, Branch Manager, Buffalo, N. Y., to E. L. McEvoy, Eastern Sales Manager, dated January 8, 1935	6159	3936
527	Letter from E. L. McEvoy, Eastern Sales Manager, to Harry Dixon, Buffalo, N. Y., dated January 10, 1935	6160	3937
528	Inter-office letter from H. T. Dixon, Buffalo, N. Y., to E. L. McEvoy, Eastern Sales Manager, dated February 18, 1935	6161	3937
530	Contract Modification, Palace Theatre, Corning, N. Y., dated December 11, 1935	6162	3938
539	Inter-office communication, dated September 10, 1932, from S. B. Kramer, Branch Manager, Cleveland, Ohio to A. W. Smith, Jr., Home Office.	6163	3939
542	Inter-office letter, dated January 12, 1934, from R. S. Smith, Branch Manager, Albany, N. Y., to A. W. Smith, Jr., Home Office	6164	3940
546	Inter-office communication, dated June 25, 1934 from R. S. Smith, Branch Manager, to A. W. Smith, Jr., Home Office	6166	3941
549	Inter-office letter, dated August 31, 1934, from R. S. Smith, Branch Manager, to R. Mochrie, Home Office	6167	3942
550	Inter-office letter, dated September 1, 1934, from H. A. Seed, Branch Manager, Buffalo, N. Y., to A. W. Smith, Jr., Home Office	6168	3943
554	Inter-office communication, dated February 26, 1935, from R. S. Smith, Branch Manager, Albany, N. Y., to A. W. Smith, Jr., Home Office	6170	3945
559	Inter-office communication from M. A. Mooney to R. Mochris, dated December 27, 1935	6171	3946
560	Carbon copy of telegram from A. W. Smith, Jr., Home Office to Mooney, Vitagraph, dated March 25, 1936	6172	3947
561	Carbon copy of telegram from Mochrie to Mooney, dated April 1, 1936	6173	3947
566	Contract recommendation signed M. A. Mooney, dated September 16, 1936	6174	3948

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		Original	Print
567	Carbon copy of Contract Recommendation with Belpik Theatres, Inc., dated October 21, 1936	6175	3948
574	Contract recommendation dated June 22, 1937	6176	3948
597	Inter-office letter dated December 9, 1940, from Arthur Sachson, Home Office, to R. H. Dunbar, Cincinnati	6178	3949
598	Inter-office letter dated December 13, 1940, from Branch Manager, (RHD), Cincinnati, to Arthur Sachson, Home Office	6179	3949
599	Inter-office letter dated December 20, 1940, from Arthur Sachson, Home Office, to R. H. Dunbar, Cincinnati	6180	3950
600	Inter-office letter dated December 23, 1940, from Branch Manager, (RHD), Cincinnati, to Arthur Sachson, Home Office	6181	3951
601	Letter dated December 27, 1940, from Arthur Sachson to Geo. V. Lynch, Schine Circuit	6182	3951
602	Inter-office letter dated September 5, 1941, from R. H. Dunbar, Branch Manager, Cincinnati to S. W. Hatch, Home Office	6182a	3952
618	Loew's franchise (10/1/36) letters and deal sheets	6184	3952
619	Metro-Goldwyn-Mayer release schedules	6246	3998
634	RKO release schedules	6282	4078
645	Warner release schedules	6296	4109
648	Agreement, Medina Temple Theatre Company and Schine Medina Corp., 2/28/39	6306	4143
648A	Copy of lease of Princess, Medina, dated April 1, 1937	6327	4160
649	Letter, 5/5/33, O'Shea to Grafiades	6333	4167
650	Letter, 5/8/33, Universal (Sauber) to Grafiades	6334	4168
651	Letter, 5/16/33, Robinson (Para) to Grafiades	6335	4169
652	Letter, 6/1/33, Paramount (Unger) to Grafiades	6336	4170
653	Letter, 6/28/33, M. G. M. (Rodgers) to Grafiades	6337	4170
662	Columbia contracts	6338	4172
682	Columbia release schedules	6340	4173
685 (A to Y)	Columbia release schedules for 1938–1939 to 1941–1942 seasons	6345a	4186
686	List of Columbia release dates	6345c	4186
687	List of Paramount release dates supplied by Morgan	6346	4228
688	Contract, 6/17/35, unsigned, Shannon et al. and G. C. Theatre Corporation	6359	4248
690	Notice of sale of Dickinson Estate assets	6369	4254
691	Memorandum, 4/20/36, Shannon et al. and Dipson et al.	6371	4256
704 (A to W)	Distribution statistics	6377a	4261
717	Release schedule 1919–1941 (United Artists)	6378	4285
718 (A to I)	Distribution statistics	6400a	4296
719	Answers of United Artists Corp. to interrogatories 15 and 16	6402	4314
765	Letter, 4/9/37, Fenyvessy to Rodgers	6411	4328

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773	Letter, 8/3/38, Fenyvessy to Maw	6412	4328
774	Letter, 8/11/38, O'Shea to Fenyvessy	6413	4329
775	Letter, 8/16/38, Fenyvessy to O'Shea	6414	4330
776	Letter, 8/16/38, Maw to Fenyvessy	6415	4330
790	Non-competitive agreement, C. & D. Fenyvessy to Munmad	6416	4331
800	Letter, 10/4/38, Belinson to Wm. Rodgers Metro.	6418	4332
801	Letter, 10/9/39, Rodgers to Belinson	6420	4333
802	Letter, 9/12/40, O'Shea to Belinson	6421	4334
805	Telegram, 5/10/38, Jenkins to Lauer	6422	4335
812	Lease, Syracuse-Strand to Syracuse Commun. Theatre Co., 9/11/41	6423	4335
818	Memorandum containing deal offered by Fox to Wallace	6451	4353
820	Telegram, RKO to Strand, 9/18/41	6454	4355
823	Agreement, 9/15/39, re Paris, Schine Lexington and Southland, Charles and Harry Schwartz	6455	4355
824	Letter, Fox to Schwartz, 11/17/38	6463	4360
825	Letter, RKO to Schwartz, 11/7/38	6464	4360
826	Letter, Universal to Schwartz, 11/10/38	6465	4361
828	Agreement, 9/15/39, re Opera House, Schine Lexington and Southland, Charles and Harry Schwartz	6466	4362
832	List of playoffs at Empire, Syracuse, beginning 9/12/41 to 2/10/42	6484	4374
834	Letter, Warner to Vournakis, 7/16/34	6486	4375
845	Agreement, 9/20/39, Lynch and Vournakis	6488	4376
846	Copy of affidavit of P. Vournakis, 9/20/39	6489	4376
864	Letter, Boumansour to Grassgreen	6490	4377
873	Rider attached to Fox contract, 4/20/35	6491	4378
879	Certified copy of Minutes of Common Council, Ogdensburg, 9/4/40	6492	4378
882	Letter enclosing copy of proposed lease, 9/30/40	6495	4380
886	Letter, 11/4/33, Warners (A. W. S.) to Smalley and attached copy of letter to O. W. Van Horne, 11/1/33	6496	4381
887	Letter, 8/9/34, Smalley to Smith and reply	6498	4382
888	Wire, 5/22/34, Smalley to Smith and reply letter	6500	4383
889	Letter, Strumer (United Artists) to Smalley, 7/27/33	6503	4384
891	Letter, Smalley to Lichtman, 8/9/34, and reply 8/14/34	6504	4385
892	Letter, Smalley to Streimer, 11/2/33, and reply 11/4/33	6506	4386
893	Letter, Smalley to Streimer, 11/9/33	6507	4387
894	Letter, Streimer to Smalley, 11/11/33	6508	4387
896	Telegram, 6/26/33, Van Horne to Sauber (Universal) and reply 7/10/33	6509	4388
897	Letter, 11/2/33, Smalley to Sauber and reply 11/4/33	6512	4389
899	Telegram, 5/27/40, Smalley to Columbia	6514	4390

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900	Copy of letter 12/4/39, Smalley to Moross, Columbia. Answers letter of 11/13	6516	4391
901	Telegram, 5/4/39, Montague to Van Horne	6517	4391
902	Telegram, 5/2/39, Smalley to Montague	6518	4392
903	United Artists Clearance schedule 1940–41	6520	4392
958–959	United Artists Clearance schedules	6520a	4393

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980	Deal sheet bearing date 9/20/23	6521	4399
985	Letter, G–C Theatre Corp. to Bates Estate, 6/30/41.	6525	4399
986	Stipulation re play-off of Paramount pictures in Auburn, N. Y.	6526	4400
987	Stipulation re gross film rentals received by Fox from Schine, for seasons 1935–36 through 1939–40	6536	4405
988	Same stipulation re Loew's Inc., film rentals for periods ending 8/27/36, 8/26/37, 9/1/38, 8/31/39 and 8/29/40	6537	4406
989	Same for Paramount—seasons 1934–35 through 1939–40	6538	4407
990	Same for RKO—seasons 1935–36 through 1939–40	6539	4408
991	Same for Vitagraph, Inc.—seasons 1934–35 through 1939–40	6540	4408
992	Stipulation re Universal Pictures Co., Inc. Positions of J. M. Schine and W. S. McKay with respect to Universal	6541	4409
993	Stipulation re servicing of prints to Schine theatres from various exchanges	6543	4410
994	Stipulation re operating companies which operate various Schine theatres listed in answer to Int. 15 referred to in par. 2 of subpoena returnable 10/2/44	6544	4411
999	Letter, 10/28/35, Miller to Lynch, cc. McCarthy re Van Wert and Bucyrus	6549	4414
1004	Agreement, 10/3/35, B. F. Keith Corp., Dom. Op. Co. Ltd., and SK. E. Op. Co. Ltd.	6550	4415
1005	Agreement, 7/31/39, B. F. Keith Corp., Dom. Op. Co. Ltd. and S. K. E. Op. Co., Ltd.	6561	4422
1006	Letter, Masonic Temple Co. to J. M. Schine, 3/25/37	6566	4425
1007	Letter, Morgan (Para) to Marcus, 10/26/44	6568	4427
1009	Clearance Schedule, Universal and Schine 1936–37 season	6570	4428
W3	Agreement, Vitagraph, Inc. and Schine, 8/22/38.	6571	4429
W4(1)	Deal sheet, Vitagraph and Schine, 9/28/37	6606	4456
W4(2)	Deal sheet, second run, Amsterdam, N. Y., 9/28/37	6607	4457
W4(3)	Deal sheet, first run, Ballston, N. Y., 9/28/37	6608	4458
W4(4)	Deal sheet, first run, Carthage, N. Y., 9/28/37	6609	4459

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		Original	Print
W4(5)	Deal sheet, first run, Glens Falls, N. Y., 9/28/37.	6610	4460
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W4(7)	Deal sheet, first run, Glover ville, N. Y., 9/28/37	6612	4462
W4(8)	Deal sheet, second run, Gloversville, N. Y., 9/28/37	6613	4463
W4(9)	Deal sheet, first run, Granville, N. Y., 12/16/38.	6614	4464
W4(10)	Deal sheet, first run, Granville, N. Y., 12/16/38.	6615	4465
W4(11)	Deal sheet, first run, Hamilton, N. Y., 9/28/37.	6616	4466
W4(12)	Deal sheet, first run, Herkimer, N. Y., 9/28/37.	6617	4467
W4(13)	Deal sheet, first run, Hudson Falls, N. Y., 9/28/37	6618	4468
W4(14)	Deal sheet, first run, Ilion, N. Y., 9/28/37	6619	4469
W4(15)	Deal sheet, first run, Little Falls, N. Y., 9/28/37.	6620	4470
W4(16)	Deal sheet, first run, Malone, N. Y., 9/28/37	6621	4471
W4(17)	Deal sheet, first run, Massena, N. Y., 9/28/37.	6622	4472
W4(18)	Deal sheet, first run, Mechanicville, N. Y., 9/28/37	6623	4473
W4(19)	Deal sheet, first run, Norwich, N. Y., undated.	6624	4474
W4(20)	Deal sheet, first run, Norwich N. Y., 9/28/37.	6625	4475
W4(21)	Deal sheet, first run Ogdensburg, N. Y., 8/22/38	6626	4476
W4(22)	Deal sheet, first run, Ogdensburg, N. Y., 9/28/37	6627	4477
W4(23)	Deal sheet, first run, Oneonta, N. Y., undated.	6628	4478
W4(24)	Deal sheet, first run, Oneonta, N. Y., 9/28/37.	6629	4479
W4(25)	Deal sheet, first run, Saranac Lake, N. Y., 9/28/37	6630	4480
W4(26)	Deal sheet, first run, Tupper Lake, N. Y., 9/28/37	6631	4481
W4(27)	Deal sheet, first run, Whitehall, N. Y., 9/28/37.	6632	4482
W4(28)	Deal sheet, first run, Watertown, N. Y., 9/27/38.	6633	4483
W4(29)	Deal sheet, second run, Watertown, N. Y., 9/28/37	6634	4484
W4(30)	Deal sheet, first run, Ashland, Ohio, 9/28/37	6635	4485
W4(31)	Deal sheet, first run, Bowling Green, O., 11/2/39	6636	4486
W4(32)	Deal sheet, first run, Bucyrus, O., 9/28/37	6637	4487
W4(33)	Deal sheet, first run, Delaware, O., 9/28/37	6638	4488
W4(34)	Deal sheet, first run, Fostoria, O., 9/28/37	6639	4489
W4(35)	Deal sheet, first run, Kent or Ravenna, O., 9/28/37	6640	4490
W4(36)	Deal sheet, repeat run, Kent or Ravenna, O., 9/28/37	6641	4491
W4(37)	Deal sheet, first run, Medina, Ohio, 9/28/37	6642	4492
W4(38)	Deal sheet, first run, Norwalk, Ohio, 9/28/37.	6643	4493
W4(39)	Deal sheet, first run, Shelby, Ohio, 9/28/37	6644	4494
W4(40)	Deal sheet, first run, Tiffin, Ohio, 9/28/37	6645	4495
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		Original	Print
W4(42)	Deal sheet, first run, Wooster, Ohio, 9/28/37	6647	4497
W4(43)	Deal sheet, first run, Auburn, N. Y., 9/28/37	6648	4498
W4(44)	Deal sheet, second run, Auburn, N. Y., 9/28/37	6649	4499
W4(45)	Deal sheet, second run, Auburn, N. Y., 3/6/39	6650	4500
W4(46)	Deal sheet, first run, Bath, N. Y., 9/28/37	6651	4501
W4(47)	Deal sheet, first run, Buffalo, N. Y., 9/28/37	6652	4502
W4(48)	Deal sheet, first run, Buffalo, N. Y., 9/28/37	6653	4503
W4(49)	Deal sheet, first run, Canandaigua, N. Y., 9/28/37	6654	4504
W4(50)	Deal sheet, first run, Corning, N. Y., 9/28/37	6655	4505
W4(51)	Deal sheet, second run, Corning, N. Y., 9/28/37	6656	4506
W4(52)	Deal sheet, first run, Cortland, N. Y., 9/28/37	6657	4507
W4(53)	Deal sheet, second run, Cortland, N. Y., 9/41/40	6658	4508
W4(54)	Deal sheet, first run, East Rochester or Fairport, N. Y., 11/2/39	6659	4509
W4(55)	Deal sheet, second run, East Rochester or Fairport, N. Y., 11/2/39	6660	4510
W4(56)	Deal sheet, first run, Geneva, N. Y., 9/28/37	6661	4511
W4(57)	Deal sheet, second run, Geneva, N. Y., 1/16/39	6662	4512
W4(58)	Deal sheet, first run, Lockport, N. Y., 9/28/37	6663	4513
W4(59)	Deal sheet, second run, Lockport, N. Y., 9/28/37	6664	4514
W4(60)	Deal sheet, first run, Newark, N. Y., 9/28/37	6665	4515
W4(61)	Deal sheet, first run, Oswego, N. Y., 9/28/37	6666	4516
W4(62)	Deal sheet, second run, Oswego, N. Y., 9/28/37	6667	4517
W4(63)	Deal sheet, first run, Penn Yan, N. Y., 9/28/37	6668	4518
W4(64)	Deal sheet, first run, Perry, N. Y., 9/28/37	6669	4519
W4(65)	Deal sheet, first run, Rochester, N. Y., 9/28/37	6670	4520
W4(66)	Deal sheet, first run, Rochester, N. Y., 9/28/37	6671	4521
W4(67)	Deal sheet, first run, Rochester, N. Y., 9/28/37	6672	4522
W4(68)	Deal sheet, first run, Rochester, N. Y., 3/23/39	6673	4523
W4(69)	Deal sheet, first run, Rochester, N. Y., 3/23/39	6674	4524
W4(70)	Deal sheet, third run, Rochester, N. Y., 9/28/37	6675	4525
W4(71)	Deal sheet, repeat run, Rochester, N. Y., 9/28/37	6676	4526
W4(72)	Deal sheet, third run, Rochester, N. Y., 9/28/37	6677	4527
W4(73)	Deal sheet, repeat run, Rochester, N. Y., 9/28/37	6678	4528
W4(74)	Deal sheet, first [illegible] Rochester, N. Y., 3/23/39	6679	4529
W4(75)	Deal sheet, first [illegible], Salamanca N. Y., 9/28/37	6680	4530
W4(76)	Deal sheet, first run, Seneca Falls, N. Y., 9/28/37	6681	4531
W4(77)	Deal sheet, first run, Syracuse, N. Y., 11/2/39	6682	4532
W4(78)	Deal sheet, first run, Athens, N. Y., 9/28/37	6683	4533
W4(79)	Deal sheet, first run, Lexington, Ky., 9/28/37	6684	4534
W4(80)	Deal sheet, second run, Lexington, Ky., 9/28/37	6685	4535
W4(81)	Deal sheet, third run, Lexington, Ky., 9/28/37	6686	4536
W4(82)	Deal sheet, first run, Richmond, Ky., 9/28/37	6687	4537
W4(83)	Deal sheet, first run, Bellefontaine, O., 9/28/37	6688	4538

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		Original	Print
W4(84)	Deal sheet, first run, Mount Vernon, O., 9/28/37	6689	4539
		6690	4540
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W4(86)	Deal sheet, first run, Hurlock, Md., 10/12/38	6692	4542
W4(87)	Deal sheet, first run, Laurel, Del., 4/2/40	6693	4543
W4(88)	Deal sheet, first run, Paris, Ky., 9/28/37	6694	4544
W4(89)	Deal sheet, second run, Paris, Ky., 12/1/38	6695	4545
W4(90)	Deal sheet, first run, Maysville, Ky., 10/12/38.	6696	4546
W4(91)	Deal sheet, first run, Middlesboro, Ky., 12/1/38.	6697	4547
W4(92)	Deal sheet, first run, Piqua, Ohio, 9/28/37	6698	4548
W4(93)	Deal sheet, first run, Corbin, Ky., 12/1/38	6699	4549
W4(94)	Deal sheet, fourth run, Lexington, Ky., 1/12/39.	6700	4550
W4(95)	Deal sheet, first run, Cambridge, Md., 10/12/37.	6702	4552
W4(96)	Deal sheet, first run, Easton, Md., 10/12/38	6704	4554
W4(97)	Deal sheet, first run, Federalsburg, Md., 10/12/38	6706	4556
		6707	4557
W4(98)	Deal sheet, first run, Milford, Del., 4/2/40	6709	4559
W4(99)	Deal sheet, first run, Salisbury, Md., 10/12/38.	6711	4561
W5	Letter agreement, Vitagraph Inc. and Schine, 3/24/36	6714	4565
W7	Letter agreement, Vitagraph Inc. and Schine, 4/24/35 and supplement letter of 4/29/35	6715	4566
W34(1)	Deal sheet, first run, Cortland, N. Y., 9/11/40.	6716	4567
W34(2)	Deal sheet, first run East Rochester, N. Y. or Fairport, N. Y., 12/6/40	6717	4568
W34(3)	Deal sheet, first run, Geneva, N. Y., 9/11/40	6718	4569
W34(4)	Deal sheet, first run, Glens Falls, N. Y., 9/11/40.	6719	4570
W34(5)	Deal sheet, second run, Glens Falls, N. Y., 9/11/40	6720	4571
W34(6)	Deal sheet, second run, Gloversville, N. Y., 12/6/40	6721	4572
W34(7)	Deal sheet, first run, Gloversville, N. Y.	6722	4573
W34(8)	Deal sheet, first run, Granville, N. Y., 9/11/40.	6723	4574
W34(9)	Deal sheet, first run, Hamilton, N. Y., 9/11/40.	6724	4575
W34(10)	Deal sheet, first run, Herkimer, N. Y., 9/11/40.	6725	4576
W34(11)	Deal sheet, first run, Hudson Falls, N. Y., 9/11/40	6726	4577
W34(12)	Deal sheet, first run, Ilion, N. Y., 9/11/40	6727	4578
W34(13)	Deal sheet, first run, Little Falls, N. Y., 12/6/40.	6728	4579
W34(14)	Deal sheet, first run, Malone, N. Y., 9/11/40	6729	4580
W34(15)	Deal sheet, first run, Massena, N. Y., 9/11/40	6730	4581
W34(16)	Deal sheet, first run, Mechanicville, N. Y., 9/11/40	6731	4582
W34(17)	Deal sheet, first run, Norwich, N. Y., 9/11/40	6732	4583
W34(18)	Deal sheet, first run, Ogdensburg, N. Y., 9/11/40	6733	4584
W34(19)	Deal sheet, second run, Ogdensburg, N. Y., 9/11/40	6734	4585
W34(20)	Deal sheet, first run, Oneonta, N. Y., 9/11/40		
W34(21)	Deal sheet, second run, Oneonta, N. Y., 9/11/40.		

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W34(22)	Deal sheet, first run, Oswego, N. Y., 9/11/40	6735	4586
W34(23)	Deal sheet, second run, Oswego, N. Y., 9/11/40	6736	4587
W34(24)	Deal sheet, first run, Perry, N. Y., 9/11/40	6737	4588
W34(25)	Deal sheet, first run, Salamanca, N. Y., 9/11/40	6738	4589
W34(26)	Deal sheet, first run, Saranac Lake, N. Y., 9/11/40	6739	4590
W34(27)	Deal sheet, first run, Seneca Falls, N. Y., 9/11/40	6740	4591
W34(28)	Deal sheet, first run, Tupper Lake, N. Y., 9/11/40	6741	4592
W34(29)	Deal sheet, second run, Watertown, N. Y., 9/11/40	6742	4593
W34(30)	Deal sheet, first run, Watertown, N. Y., 9/11/40	6743	4594
W34(31)	Deal sheet, first run, Whitehall, N. Y., 9/11/40	6744	4595
W34(32)	Deal sheet, first run, Ashland, O., 9/11/40	6745	4596
W34(33)	Deal sheet, first run, Athens, Ohio, 9/11/40	6746	4597
W34(34)	Deal sheet, first run, Bowling Green, O., 9/11/40	6747	4598
W34(35)	Deal sheet, second run, Bowling Green, O., 9/11/40	6748	4599
W34(36)	Deal sheet, first run, Bucyrus, O., 9/11/40	6749	4600
W34(37)	Deal sheet, first run, Delaware, O., 9/11/40	6750	4601
W34(38)	Deal sheet, first run, Fostoria, O., 9/11/40	6751	4602
W34(39)	Deal sheet, first run, Kent or Ravenna, O., 9/11/40	6752	4603
W34(40)	Deal sheet, second run, Kent or Ravenna, O., 9/11/40	6753	4604
W34(41)	Deal sheet, first run, Medina, O., 9/11/40	6754	4605
W34(42)	Deal sheet, first run, Norwalk, Ohio, 9/11/40	6755	4606
W34(43)	Deal sheet, first run, Piqua, Ohio, 9/11/40	6756	4607
W34(44)	Deal sheet, first run, Shelby, Ohio, 9/11/40	6757	4608
W34(45)	Deal sheet, first run, Tiffin, Ohio, 9/11/40	6758	4609
W34(46)	Deal sheet, first run, Van Wert, O., 9/11/40	6759	4610
W34(47)	Deal sheet, first run, Wooster, Ohio, 9/11/40	6760	4611
W34(48)	Deal sheet, second run, Wooster, O., 9/11/40	6761	4612
W34(49)	Deal sheet, first run, Corbin, Ky., 9/11/40	6762	4613
W34(50)	Deal sheet, first run, Lexington, Ky., 9/11/40	6763	4614
W34(51)	Deal sheet, second run, Lexington, Ky., 9/11/40	6764	4615
W34(52)	Deal sheet, third run, Lexington, Ky., 9/11/40	6765	4616
W34(53)	Deal sheet, fourth run, Lexington, Ky., 9/11/40	6766	4617
W34(54)	Deal sheet, first run, Maysville, Ky., 9/11/40	6767	4618
W34(55)	Deal sheet, first run, Middlesboro, Ky., 9/11/40	6768	4619
W34(56)	Deal sheet, first run, Paris, Ky., 9/11/40	6769	4620
W34(57)	Deal sheet, first run, Richmond, Ky., 9/11/40	6770	4621
W34(58)	Deal sheet, first run, Cambridge, Md., 9/11/40	6771	4622
W34(59)	Deal sheet, first run, Easton, Md., 9/11/40	6772	4623
W34(60)	Deal sheet, first run, Federalsburg, Md., 9/11/40	6773	4624
W34(61)	Deal sheet, first run, Salisbury, Md., 9/11/40	6774	4625
W34(62)	Deal sheet, first run, Salisbury, Md., 9/11/40	6775	4626

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
W34(63)	Deal sheet, first run, Amsterdam, N. Y., 9/11/40	6776	4627
W34(64)	Deal sheet, second run, Amsterdam, N. Y., 9/11/40	6777	4628
W34(65)	Deal sheet, second run, Auburn, N. Y., 9/11/40.	6778	4629
W34(66)	Deal sheet, first run, Auburn, N. Y., 9/11/40.	6779	4630
W34(67)	Deal sheet, first run, Ballston, N. Y., 9/11/40.	6780	4631
W34(68)	Deal sheet, first run, Bath, N. Y., 9/11/40	6781	4632
W34(69)	Deal sheet, first run, Canandaigua, N. Y., 9/11/40	6782	4633
W34(70)	Deal sheet, first run, Carthage, N. Y., 9/11/40.	6783	4634
W34(71)	Deal sheet, second run, Corning, N. Y., 9/11/40.	6784	4635
W34(72)	Deal sheet, first run, Corning, N. Y., 9/11/40.	6785	4636
W34(73)	Deal sheet, first run, Bellefontaine, N. Y., 9/11/40	6786	4637
W34(74)	Deal sheet, first run, Mount Vernon, O., 9/11/40	6787	4638
W34(75)	Deal sheet, first run, Hurlock, Md., 9/11/40.	6788	4639
W34(76)	Deal sheet, first run, St. Michels, Md., 9/11/40.	6789	4640
W34(77)	Deal sheet, first run, Laurel, Del., 9/11/40	6790	4641
W34(78)	Deal sheet, first run, Milford, Del., 9/11/40.	6791	4642
W34(79)	Deal sheet, second run, Lockport, N. Y., 9/11/40	6792	4643
W34(80)	Deal sheet, second run, Geneva, N. Y., 9/11/40.	6793	4644
W35A	Agreement, Vitagraph Inc. and Schine, 9/11/40.	6794	4645
W35B	Agreement, Vitagraph Inc. and Schine, 9/11/40.	6795	4646
U137	Agreement, Universal and Schine, 9/7/38	6796	4649
U137(1)	Deal sheet, first run, Amsterdam, N. Y., 8/26/38	6797	4650
U137(2)	Deal sheet, first run, Ballston, N. Y., 9/26/38.	6798	4651
U137(3)	Deal sheet, first run, Carthage, N. Y., 9/26/38.	6799	4652
U137(4)	Deal sheet, first run, Glens Falls, N. Y., 9/26/38.	6800	4653
U137(5)	Deal sheet, second run, Glens Falls, N. Y., 9/26/38	6801	4654
U137(6)	Deal sheet, first run, Gloversville, N. Y., 9/26/38	6802	4655
U137(7)	Deal sheet, second run, Gloversville, N. Y., 9/26/38	6803	4656
U137(8)	Deal sheet, first run, Granville, N. Y., 9/26/38.	6804	4657
U137(9)	Deal sheet, first run, Hamilton, N. Y., 9/26/38.	6805	4658
U137(10)	Deal sheet, first run, Herkimer, N. Y., 9/26/38.	6806	4659
U137(11)	Deal sheet, first run, Hudson Falls, N. Y., 9/26/38	6807	4660
U137(12)	Deal sheet, first run, Ilion, N. Y., 9/26/38	6808	4661
U137(13)	Deal sheet, first run, Little Falls, N. Y., 9/26/38.	6809	4662
U137(14)	Deal sheet, first run, Malone, N. Y., 9/26/38	6810	4663
U137(15)	Deal sheet, first run, Massena, N. Y., 8/26/38.	6811	4664
U137(16)	Deal sheet, first run, Mechanicville, N. Y., 8/26/38	6812	4665
U137(17)	Deal sheet, first run, Norwich, N. Y., 8/26/38.	6813	4666

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U137(18)	Deal sheet, first run, Ogdensburg, N. Y., 8/26/38	6814	4667
U137(19)	Deal sheet, first run, Oneonta, N. Y., 8/26/38	6815	4668
U137(20)	Deal sheet, first run, Saranac Lake, N. Y., 8/26/38	6816	4669
U137(21)	Deal sheet, first run, Tupper Lake, N. Y., 8/26/38	6817	4670
U137(22)	Deal sheet, first run, Watertown, N. Y., 8/26/38	6818	4671
U137(23)	Deal sheet, second run, Watertown, N. Y., 8/26/38	6819	4672
U137(24)	Deal sheet, first run, Whitehall, N. Y., 8/26/38	6820	4673
U137(25)	Deal sheet, first run, Auburn, N. Y., 8/26/38	6821	4674
U137(26)	Deal sheet, second run, Auburn, N. Y., 8/26/38	6822	4675
U137(27)	Deal sheet, Buffalo, N. Y., 8/26/38	6823	4676
U137(28)	Deal sheet, Buffalo, N. Y., 8/26/38	6824	4677
U137(29)	Deal sheet, first run, Bath, N. Y., 8/26/38	6825	4678
U137(30)	Deal sheet, first run, Canandaigua, N. Y., 8/26/38	6826	4679
U137(31)	Deal sheet, first run, Corning, N. Y., 8/26/38	6827	4680
U137(32)	Deal sheet, second run, Corning, N. Y., 8/26/38	6828	4681
U137(33)	Deal sheet, first run, Cortland, N. Y., 8/26/38	6829	4682
U137(34)	Deal sheet, first run, Geneva, N. Y., 8/26/38	6830	4683
U137(35)	Deal sheet, first run, Lockport, N. Y., 8/26/38	6831	4684
U137(36)	Deal sheet, second run, Lockport, N. Y., 8/26/38	6832	4685
U137(37)	Deal sheet, first run, Newark, N. Y., 8/26/38	6833	4686
U137(38)	Deal sheet, first run, Oswego, N. Y., 8/26/38	6834	4687
U137(39)	Deal sheet, first run, Penn Yan, N. Y., 8/26/38	6835	4688
U137(40)	Deal sheet, first run, Perry, N. Y., 8/26/38	6836	4689
U137(41)	Deal sheet, Rochester, N. Y., 8/26/38	6837	4690
U137(42)	Deal sheet, Rochester, N. Y., 8/26/38	6838	4691
U137(43)	Deal sheet, Rochester, N. Y., 8/26/38	6839	4692
U137(44)	Deal sheet, Rochester, N. Y., 8/26/38	6840	4693
U137(45)	Deal sheet, repeat run, Rochester, N. Y., 8/26/38	6841	4694
U137(46)	Deal sheet, Rochester, N. Y., 8/26/38	6842	4695
U137(47)	Deal sheet, repeat run, Rochester, N. Y., 8/26/38	6843	4696
U137(48)	Deal sheet, first run, Salamanca, N. Y., 8/26/38	6844	4697
U137(49)	Deal sheet, first run, Seneca Falls, N. Y., 8/26/38	6845	4698
U137(51)	Deal sheet, first run, Bellefontaine, O., 8/26/38	6846	4699
U137(52)	Deal sheet, first run, Corbin, Ky., 11/10/38	6847	4700
U137(53)	Deal sheet, second run, Corbin, Ky., 1/16/39	6848	4701
U137(54)	Deal sheet, first run, Delaware, Ohio, 8/26/38	6849	4702
U137(55)	Deal sheet, first run, Maysville, Ky., 1/16/38	6850	4703
U137(56)	Deal sheet, first run, Middlesboro, Ky., 11/10/38	6851	4704
U137(57)	Deal sheet, first run, Piqua, Ohio, 8/26/38	6852	4705
U137(58)	Deal sheet, first run, Lexington, Ky., 8/26/38	6853	4706
U137(59)	Deal sheet, second run, Lexington, Ky., 8/26/38	6854	4707

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U137(60)	Deal sheet, first run, Paris, Ky., 8/26/38	6855	4708
U137(61)	Deal sheet, first run, Ashland, Ohio, 8/26/38	6856	4709
U137(62)	Deal sheet, first run, Bucyrus, O., 8/26/38	6857	4710
U137(63)	Deal sheet, first run, Fostoria, O., 8/26/38	6858	4711
U137(64)	Deal sheet, first run, Mt. Vernon, O., 8/26/38	6859	4712
U137(65)	Deal sheet, first run, Norwalk, O., 8/26/38	6860	4713
U137(66)	Deal sheet, first run, Tiffin, O., 8/26/38	6861	4714
U137(67)	Deal sheet, first run, Van Wert, O., 8/26/38	6862	4715
U137(68)	Deal sheet, first run, Wooster, O., 8/26/38	6863	4716
U137(69)	Deal sheet, first run, Cambridge, Md., 8/26/38	6864	4717
U137(70)	Deal sheet, first run, Easton, Md., 11/10/38	6865	4718
U137(71)	Deal sheet, first run, Federalsburg, Md., 11/10/38	6866	4719
U137(72)	Deal sheet, first run, Hurlock, Md., 11/10/38	6867	4720
U137(73)	Deal sheet, first run, Laurel, Del., 4/17/39	6868	4721
U137(74)	Deal sheet, Milford, Del., 4/17/39	6869	4722
U137(75)	Deal sheet, first run, Salisbury, Md., 10/21/38	6870	4723
U207	Agreement Universal and Schine, 6/27/39	6871	4724
U207(1)	Deal sheet, Universal and Schine, 6/27/39	6872	4725
U207(2)	Deal sheet, Universal and Schine, 6/27/39	6873	4726
U207(3)	Deal sheet, Universal and Schine, 6/27/39	6874	4727
U207(4)	Deal sheet, Universal and Schine, 6/27/39	6875	4728
U207(5)	Deal sheet, Universal and Schine, 6/27/39, Glens Falls, second run	6876	4729
U207(6)	Deal sheet, Universal and Schine, 6/27/39, Gloversville, first run	6877	4730
U207(7)	Deal sheet, Universal and Schine, 6/27/39, Gloversville, second run	6878	4731
U207(8)	Deal sheet, Universal and Schine, 6/27/39, Granville, first run	6879	4732
U207(9)	Deal sheet, Universal and Schine, 6/27/39, Hamilton, first run	6880	4733
U207(10)	Deal sheet, Universal and Schine, 6/27/39, Herkimer, first run	6881	4734
U207(11)	Deal sheet, Universal and Schine, 6/27/39, Hudson Falls, first run	6882	4735
U207(12)	Deal sheet, Universal and Schine, 6/27/39, Ilion, first run	6883	4736
U207(13)	Deal sheet, Universal and Schine, 6/27/39, Little Falls, first run	6884	4737
U207(14)	Deal sheet, Universal and Schine, 6/27/39, Malone, first run	6885	4738
U207(15)	Deal sheet, Universal and Schine, 6/27/39, Massena, first run	6886	4739
U207(16)	Deal sheet, Universal and Schine, 6/27/39, Mechanicville, first run	6887	4740
U207(17)	Deal sheet, Universal and Schine, 6/27/39, Norwich, first run	6888	4741
U207(18)	Deal sheet, Universal and Schine, 6/27/39, Ogdensburg, first run	6889	4742

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U207(19)	Deal sheet, Universal and Schine, 6/27/39, Oneonta, first run	6890	4743
U207(20)	Deal sheet, Universal and Schine, 6/27/39, Saranac Lake, first run	6891	4744
U207(21)	Deal sheet, Universal and Schine, 6/27/39, Tupper Lake, first run	6892	4745
U207(22)	Deal sheet, Universal and Schine, 6/27/39, Watertown, first run	6893	4746
U207(23)	Deal sheet, Universal and Schine, 6/27/39, Watertown, second run	6894	4747
U207(24)	Deal sheet, Universal and Schine, 6/27/39, Whitehall, first run	6895	4748
U207(25)	Deal sheet, Universal and Schine, 6/27/39, Auburn, first run	6896	4749
U207(26)	Deal sheet, Universal and Schine, 6/27/39, Auburn, second run	6897	4750
U207(27)	Deal sheet, Universal and Schine, 6/27/39, Bath, first run	6898	4751
U207(28)	Deal sheet, Universal and Schine, 6/27/39, Buffalo (Granada), second run	6899	4752
U207(29)	Deal sheet, Universal and Schine, 6/27/39, Buffalo (Riverside) 2nd run	6900	4753
U207(30)	Deal sheet, Universal and Schine, 6/27/39, Canandaigua, first run	6901	4754
U207(31)	Deal sheet, Universal and Schine, 6/27/39, Corning, first run	6902	4755
U207(32)	Deal sheet, Universal and Schine, 6/27/39, Corning, second run	6903	4756
U207(33)	Deal sheet, Universal and Schine, 6/27/39, Cortland, first run	6904	4757
U207(34)	Deal sheet, Universal and Schine, 6/27/39, E. Rochester or Fairport, first and repeat	6905	4758
U207(35)	Deal sheet, Universal and Schine, 6/27/39, Geneva, first run	6906	4759
U207(36)	Deal sheet, Universal and Schine, 6/27/39, Lockport, first run	6907	4760
U207(37)	Deal sheet, Universal and Schine, 6/27/39, Lockport, second run	6908	4761
U207(38)	Deal sheet, Universal and Schine, 6/27/39, Newark, first run	6909	4762
U207(39)	Deal sheet, Universal and Schine, 6/27/39, Oswego, first run	6910	4763
U207(40)	Deal sheet, Universal and Schine, 6/27/39, Penn Yan, first run	6911	4764
U207(41)	Deal sheet, Universal and Schine, 6/27/39, Perry, first run	6912	4765
U207(42)	Deal sheet, Universal and Schine, 6/27/39, Rochester, Cameo	6913	4766
U207(43)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Dixie or State	6914	4767

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U207(44)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Dixie or State repeat	6915	4768
U207(45)	Deal sheet, Universal and Schine, 6/27/39, Rochester, Grand	6916	4769
U207(46)	Deal sheet, Universal and Schine, 6/27/39, Rochester, Lake	6917	4770
U207(47)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Rivera or Liberty	6918	4771
U207(48)	Deal sheet, Universal and Schine, 6/27/39, Rochester—Liberty repeat	6919	4772
U207(49)	Deal sheet, Universal and Schine, 12/15/39, Rochester, Madison	6920	4773
U207(50)	Deal sheet, Universal and Schine, 12/15/39, Rochester, Monroe	6921	4774
U207(51)	Deal sheet, Universal and Schine, 12/5/40, Rochester—Webster	6922	4775
U207(52)	Deal sheet, Universal and Schine, 12/18/41, Rochester—Webster	6923	4776
U207(53)	Deal sheet, Universal and Schine, 12/18/39, Rochester—West End	6924	4777
U207(54)	Deal sheet, Universal and Schine, 6/27/39, Salamanca, first run	6925	4778
U207(55)	Deal sheet, Universal and Schine, 6/27/39, Seneca Falls, first run	6926	4779
U207(56)	Deal sheet, Universal and Schine, 6/27/39, Syracuse—Palace	6927	4780
U207(57)	Deal sheet, Universal and Schine, 6/27/39 Athens, Ohio—first run	6928	4781
U207(58)	Deal sheet, Universal and Schine, 6/27/39, Corbin, Ky., first run	6929	4782
U207(59)	Deal sheet, Universal and Schine, 6/27/39, Lexington, Ky.—first run	6930	4783
U207(60)	Deal sheet, Universal and Schine, 6/27/39, Lexington, Ky.—second run	6931	4784
U207(61)	Deal sheet, Universal and Schine, 3/4/40, Lexington, Ky. (Opera House) third run	6932	4785
U207(62)	Deal sheet, Universal and Schine, 1/22/41, Lexington, Ky.—(Ada Meade) fourth run	6933	4786
U207(63)	Deal sheet, Universal and Schine, 6/27/39, Maysville, Ky.—first run	6934	4787
U207(64)	Deal sheet, Universal and Schine, 6/27/39, Middlesboro, Ky.—first run	6935	4788
U207(65)	Deal sheet, Universal and Schine, 6/27/39, Paris, Ky.—first run	6936	4789
U207(66)	Deal sheet, Universal and Schine, 6/27/39, Piqua, Ohio—first run	6937	4790
U207(67)	Deal sheet, Universal and Schine, 6/27/39, Richmond, Ky.—first run	6938	4791
U207(68)	Deal sheet, Universal and Schine, 6/27/39, Ashland, Ohio—first run	6939	4792

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
U207(69)	Deal sheet, Universal and Schine, 6/27/39, Bellefontaine, Ohio—first run	6940	4793
U207(70)	Deal sheet, Universal and Schine, 6/27/39, Bowling Green, Ohio—first run	6941	4794
U207(71)	Deal sheet, Universal and Schine, 6/27/39, Bucyrus, Ohio—first run	6942	4795
U207(72)	Deal sheet, Universal and Schine, 6/27/39, Delaware, Ohio—first run	6943	4796
U207(73)	Deal sheet, Universal and Schine, 6/27/39, Fostoria, Ohio—first run	6944	4797
U207(74)	Deal sheet, Universal and Schine, 6/27/39, Kent or Ravenna, first run	6945	4798
U207(75)	Deal sheet, Universal and Schine, 6/27/39, Kent or Ravenna, repeat	6946	4799
U207(76)	Deal sheet, Universal and Schine, 6/27/39, Medina, first run	6947	4800
U207(77)	Deal sheet, Universal and Schine, 6/27/39, Mt. Vernon, first run	6948	4801
U207(78)	Deal sheet, Universal and Schine, 6/27/39, Norwalk, first run	6949	4802
U207(79)	Deal sheet, Universal and Schine, 6/27/39, Tiffin, first run	6950	4803
U207(80)	Deal sheet, Universal and Schine 6/27/39, Van Wert, first run	6951	4804
U207(81)	Deal sheet, Universal and Schine, 6/27/39, Wooster, first run	6952	4805
U207(82)	Deal sheet, Universal and Schine, 6/27/39, Cambridge, Md. first run	6953	4806
U207(83)	Deal sheet, Universal and Schine, 6/27/39, Easton, first run	6954	4807
U207(84)	Deal sheet, Universal and Schine, 6/27/39, Federalsburg, first run	6955	4808
U207(85)	Deal sheet, Universal and Schine, 12/15/39, Hurlock, first run	6956	4809
U207(86)	Deal sheet, Universal and Schine, 6/27/39, Laurel, Del., first run	6957	4810
U207(87)	Deal sheet, Universal and Schine, 6/27/39, Milford, first run	6958	4811
U207(88)	Deal sheet, Universal and Schine, 6/27/39, Salisbury, Md., first run	6955	4812
U207(89)	Deal sheet, Universal and Schine, 12/15/39, St. Michaels, first run	6960	4813
R1	Agreement, RKO and Schine, 11/20/36	6961	4814
R2(1)	Deal sheet, first run, Auburn, N. Y.	6962	4815
R2(2)	Deal sheet, first run, 11/20/36, Bath, N. Y.	6963	4816
R2(3)	Deal sheet, first run, 11/20/36, Canandaigua, N. Y.	6964	4817
R2(4)	Deal sheet, first run, 11/20/36, Carthage, N. Y.	6965	4818
R2(5)	Deal sheet, first and second runs, 11/20/36, Corning, N. Y.	6966	4819

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R2(6)	Deal sheet, first run, Cortland, N. Y., 11/20/36.	6967	4820
R2(7)	Deal sheet, first run, Geneva, N. Y., 11/20/36.	6968	4821
R2(8)	Deal sheet, first and second runs Glens Falls, N. Y., 11/20/36	6969	4822
R2(9)	Deal sheet, first run, Gloversville N. Y., 11/20/36	6970	4823
R2(10)	Deal sheet, first run, Hamilton, N. Y., 11/20/36.	6971	4824
R2(11)	Deal sheet, first run, Herkimer, N. Y., 11/20/36.	6972	4825
R2(12)	Deal sheet, first run, Hudson Falls, N. Y., 11/20/36	6973	4826
R2(13)	Deal sheet, first run, Little Falls, N.Y., 11/20/36	6974	4827
R2(14)	Deal sheet, first and second runs, Lockport, N. Y., 11/20/36	6975	4828
R2(15)	Deal sheet, first run, Malone, N. Y., 11/20/36.	6976	4829
R2(16)	Deal sheet, first run, Massena, N. Y., 11/20/36.	6977	4830
R2(17)	Deal sheet, first run, Newark, N. Y., 11/20/36.	6978	4831
R2(18)	Deal sheet, first run, Norwich, N. Y., 11/20/36.	6979	4832
R2(19)	Deal sheet, first run, Oneonta, N. Y., 11/20/36.	6980	4833
R2(20)	Deal sheet, first run, Ogdensburg, N. Y., 11/20/36	6981	4834
R2(21)	Deal sheet, first run, Oswego, N. Y., 11/20/36.	6982	4835
R2(22)	Deal sheet, first run, Penn Yan, N. Y., 11/20/36.	6983	4836
R2(23)	Deal sheet, first run, Perry, N. Y., 11/20/36...	6984	4837
R2(24)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6985	4838
R2(25)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6986	4839
R2(26)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6987	4840
R2(27)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6988	4841
R2(28)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6989	4842
R2(29)	Deal sheet, first run, Rochester, N. Y., 11/20/36.	6990	4843
R2(30)	Deal sheet, first run, Salamanca, N. Y., 11/20/36	6991	4844
R2(31)	Deal sheet, first run, Saranac Lake, N. Y., 11/20/36	6992	4845
R2(32)	Deal sheet, first run, Seneca Falls, N. Y., 11/20/36	6993	4846
R2(33)	Deal sheet, first run, Tupper Lake, N. Y., 11/20/36	6994	4847
R2(34)	Deal sheet, first and second runs, Watertown, N. Y., 11/20/36	6995	4848
R2(35)	Deal sheet, first run, 11/19/36, Ashland, Ohio..	6996	4849
R2(36)	Deal sheet, first run, Athens, O., 11/30/36.....	6997	4850
R2(37)	Deal sheet, first run, Bellefontaine, O., 11/20/36.	6998	4851
R2(38)	Deal sheet, first run, Bucyrus, O., 11/19/36....	6999	4852
R2(39)	Deal sheet, first run, Fostoria, O., 11/20/36....	7000	4853
R2(40)	Deal sheet, first run, Norwalk, O., 11/19/36...	7001	4854
R2(41)	Deal sheet, first run, Piqua, O., 11/30/36.....	7002	4855
R2(42)	Deal sheet, first run, Van Wert, O., 11/19/36..	7003	4856
R2(43)	Deal sheet, first run, Wooster, O., 11/19/36....	7004	4854
R2(44)	Deal sheet, first run, Paris, Ky., 11/30/36.....	7005	4858
R2(45)	Deal sheet, first run, Richmond, Ky., 11/30/36.	7006	4859
R2(46)	Deal sheet, first run, Tiffin, O., 11/20/36.....	7007	4860

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R2(47)	Deal sheet, subsequent run, Buffalo, N. Y., 11/20/36	7008	4868
R2(48)	Deal sheet, subsequent run, Buffalo, N. Y., 11/20/36	7009	4862
R2(50)	Deal sheet, first run, Mt. Vernon, O., 11/20/36.	7010	4863
R2(51)	Deal sheet, first run, Lexington, Ky., 11/30/36.	7011	4864
R20	Letter agreement, 10/18/35	7012	4865
R37			
R37(1)	Deal sheet, first run, RKO and Schine, Amsterdam, N. Y., 11/2/36	7013	4866
R37(2)	Deal sheet, second run, Amsterdam, N. Y., 8/15/38	7014	4867
R37(3)	Deal sheet, first run, Ballston, N. Y., 8/15/38.	7015	4868
R37(4)	Deal sheet, first run, Glens Falls, N. Y., 8/15/38.	7016	4869
R37(5)	Deal sheet, second run, Glens Falls, N. Y., 8/15/38	7017	4870
R37(6)	Deal sheet, first run, Gloversville, N. Y., 8/15/38	7018	4871
R37(8)	Deal sheet, first run, Hamilton, N. Y., 8/15/38.	7019	4872
R37(9)	Deal sheet, first run, Herkimer, N. Y., 8/15/38.	7020	4873
R37(10)	Deal sheet, first run, Hudson Falls, N. Y., 8/15/38	7021	4874
R37(11)	Deal sheet, first run, Ilion, N. Y., 8/15/38	7022	4875
R37(12)	Deal sheet, first run, Malone, N. Y., 8/15/38.	7023	4876
R37(13)	Deal sheet, first run, Massena, N. Y., 8/15/38.	7024	4877
R37(14)	Deal sheet, first run, Mechanicville, N. Y., 8/15/38	7025	4878
R37(15)	Deal sheet, first run, Norwich, N. Y., 8/15/38.	7026	4879
R37(16)	Deal sheet, first run, Ogdensburg, N. Y., 8/15/38	7027	4880
R37(17)	Deal sheet, first run, Oeonta, N. Y., 8/15/38	7028	4881
R37(18)	Deal sheet, first run, Saranac Lake, N. Y., 8/15/38	7029	4882
R37(19)	Deal sheet, first run, Tupper Lake, N. Y., 8/15/38	7030	4883
R37(20)	Deal sheet, first run, Watertown, N. Y., 8/15/38.	7031	4884
R37(21)	Deal sheet, second run, Watertown, N. Y., 8/15/38	7032	4885
R37(22)	Deal sheet, first run, Whitehall, N. Y., 8/15/38.	7033	4886
R37(23)	Deal sheet, first run, Auburn, N. Y., 8/15/38	7034	4887
R37(24)	Deal sheet, second run, Auburn, N. Y., 1/11/30	7035	4888
R37(25)	Deal sheet, first run, Bath, N. Y., 8/15/38	7036	4889
R37(26)	Deal sheet, first run, Canandaigua, N. Y., 8/15/38	7037	4890
R37(27)	Deal sheet, first run, Corning, N. Y., 8/15/38.	7038	4891
R37(28)	Deal sheet, second run, Corning, N. Y., 8/15/38.	7039	4892
R37(29)	Deal sheet, first run, Cortland, N. Y., 8/15/38.	7040	4893
R37(30)	Deal sheet, first run, Geneva, N. Y., 8/15/38.	7041	4894
R37(31)	Deal sheet, first run, Lockport, N. Y., 8/15/38	7042	4895

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R37(32)	Deal sheet, second run, Lockport, N. Y., 8/15/38	7043	4896
R37(33)	Deal sheet, first run, Newark, N. Y., 8/15/38	7044	4897
R37(34)	Deal sheet, first run, Penn Yan, N. Y., 8/15/38	7045	4898
R37(35)	Deal sheet, first run, Perry, N. Y., 8/15/38	7046	4899
R37(36)	Deal sheet, subsequent run, Rochester, N. Y., 8/16/38	7047	4900
R37(37)	Deal sheet, RKO and Schine, subsequent run Rochester, N. Y., 8/15/38	7048	4901
R37(38)	Deal sheet, subsequent run, Rochester, N. Y., 8/15/38	7049	4902
R37(39)	Deal sheet, subsequent run, Rochester, N. Y., 8/20/38	7050	4903
R37(40)	Deal sheet, subsequent run, Rochester, N. Y., 8/20/38	7051	4904
R37(41)	Deal sheet, repeat run, Rochester, N. Y., 8/15/38	7052	4905
R37(42)	Deal sheet, first run, Salamanca, N. Y., 8/15/38	7053	4906
R37(43)	Deal sheet, first run, Seneca Falls, N. Y., 8/15/38	7054	4907
R37(44)	Deal sheet, first run, Ashland, O., 8/15/38	7055	4908
R37(45)	Deal sheet, first run, Athens, O., 8/15/38	7056	4909
R37(46)	Deal sheet, first run, Bellefontaine, O., 8/15/38	7057	4910
R37(47)	Deal sheet, first run, Bucyrus, O., 8/15/38	7058	4911
R37(48)	Deal sheet, first run, Delaware, O., 8/15/38	7059	4912
R37(49)	Deal sheet, first run, Fostoria, O., 8/15/38	7060	4913
R37(50)	Deal sheet, first run, Kent or Ravenna, Ohio, 8/15/38	7061	4914
R37(51)	Deal sheet, repeat run, Kent or Ravenna, Ohio, 8/15/38	7062	4915
R37(52)	Deal sheet, first run, Medina, Ohio, 8/15/38	7063	4916
R37(53)	Deal sheet, first run, Mt. Vernon, Ohio, 8/15/38	7064	4917
R37(54)	Deal sheet, first run, Norwalk, O., 8/15/38	7065	4918
R37(55)	Deal sheet, first run, Shelby, Ohio, 8/15/38	7066	4919
R37(56)	Deal sheet, first run, Tiffin, Ohio, 8/15/38	7067	4920
R37(57)	Deal sheet, first run, Van Wert, Ohio, 8/15/38	7068	4921
R37(58)	Deal sheet, first run, Wooster, Ohio, 8/15/38	7069	4922
R37(59)	Deal sheet, first run, Lexington, Ky., 8/15/38	7070	4923
R37(60)	Deal sheet, second run, Lexington, Ky., 8/15/38	7071	4924
R37(61)	Deal sheet, third run, Lexington, Ky., 8/15/38	7072	4925
R37(62)	Deal sheet, first run, Paris, Ky., 8/15/38	7073	4926
R37(63)	Deal sheet, first run, Piqua, Ohio, 8/15/38	7074	4927
R37(64)	Deal sheet, first run, Richmond, Ky., 8/15/38	7075	4928
R37(65)	Deal sheet, first run, Little Falls, N. Y., 8/15/38	7076	4929
R37(66)	Deal sheet, RKO and Schine, first run, East Rochester or Fairport, N. Y., 11/28/39	7077	4930
R37(67)	Deal sheet, fourth run, Lexington, Ky., 4/21/41	7078	4931
R37(68)	Deal sheet, first run, Oswego, N. Y., 10/26/38	7079	4932
R37(69)	Deal sheet, first run, Pikesville, Ky., 3/9/39	7080	4933
R37(70)	Deal sheet, first run, Salisbury, Md., 11/3/38	7081	4934

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
R37(71)	Deal sheet, first run, Hurlock, Md., 10/9/40	7082	4935
R37(72)	Deal sheet, first run, 8/15/38, Cambridge, Md.	7083	4936
R37(73)	Deal sheet, first run, Maysville, Ky., 8/15/38	7084	4937
R37(74)	Deal sheet, first run, Easton, Md., 11/3/38	7085	4938
R37(75)	Deal sheet, first run, Federalsburg, Md., 11/3/38	7086	4939
R37(76)	A-deal sheet, RKO and Schine, first run, Granville, N. Y., 12/27/38	7087	4940
	B-deal sheet RKO and Schine, first run, Granville, N. Y., 12/27/38	7088	4941
R37(77)	Deal sheet, no run, Carthage, N. Y., 8/15/38	7089	4942
R37(78)	Deal sheet, RKO and Schine, Rochester, N. Y., 11/28/39	7090	4943
R37(79)	Deal sheet, Rochester, N. Y., 11/28/39	7091	4944
R37(80)	Deal sheet, Rochester, N. Y., 11/28/39	7092	4945
R37(81)	Deal sheet, Rochester, N. Y., 4/1/41	7093	4946
R37(82)	Deal sheet, Syracuse, N. Y., 4/1/41	7094	4947
R37(83)	Deal sheet, Salisbury, Md., 10/9/40	7095	4948
R42	Agreement, RKO and Schine, 10/29/34	7096	4949
R43	Letter, RKO and Schine, 11/1/34	7098	4950
F1	Agreement, Fox and Schine, 8/5/36	7099	4951
F102	Deal sheet, Fox and Schine, 6/17/38, Hamilton, N. Y., 1st run	7103	4955
F103	Deal sheet, Fox and Schine, 6/17/36, Glens Falls, N. Y., 2nd run	7104	4956
F104	Deal sheet, Fox and Schine, 6/17/36, Herkimer, N. Y., 1st run	7105	4957
F105	Deal sheet, Fox and Schine, 6/17/36, Hudson Falls, 1st run	7106	4958
F106	Deal sheet, Fox and Schine, 6/17/36, Little Falls, N. Y.	7107	4959
F107	Deal sheet, Fox and Schine, 6/17/36, Malone, N. Y.	7108	4960
F108	Deal sheet, Fox and Schine, 6/17/36, Athens, O., 1st run	7109	4961
F109	Deal sheet, Fox and Schine, 6/17/36, Gloversville and Oneonta, 2nd run	7110	4962
F110	Deal sheet, Fox and Schine, 10/27/37, Fostoria, O.	7111	4963
F111	Deal sheet, Fox and Schine, 10/11/39, Medina, O.	7112	4964
F112	Deal sheet, Fox and Schine, 10/28/36, Watertown, Palace, 3rd run	7113	4965
F113	Deal sheet, Fox and Schine, 8/11/37, Perry, 1st run	7114	4966
F114	Deal sheet, Fox and Schine, 8/11/37, Penn Yan, 1st run	7115	4967
F115	Deal sheet, Fox and Schine, 4/27/37, Ilion, N. Y.	7116	4968

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
Fi93	Agreement, Twentieth Century-Fox and Schine, 6/5/39	7116a	4969
C100	Agreement, Columbia and Schine, 10/17/38	7117	4971
C101	Letter, Columbia to Schine, 11/28/38	7119	4973
C102(1)	Deal Sheet, Columbia and Schine, second run, Auburn, N. Y., 10/17/38	7120	4975
C102(2)	Deal Sheet, first run, Bath, N. Y., 10/17/38	7121	4976
C102(3)	Deal sheet, subsequent run, Buffalo, N. Y., 10/17/38	7122	4977
C102(4)	Deal sheet, subsequent run, Buffalo, N. Y., 10/17/38	7123	4978
C102(5)	Deal sheet, first run, Canandaigua, N. Y., 10/17/38	7124	4979
C102(6)	Deal sheet, first run, Cortland, N. Y., 10/17/38	7125	4980
C102(7)	Deal sheet, first run, Geneva, N. Y., 10/17/38	7126	4981
C102(8)	Deal sheet, first run, Lockport, N. Y., 10/17/38	7127	4982
C102(9)	Deal sheet, second run, Lockport, N. Y., 10/17/38	7128	4983
C102(10)	Deal sheet, first run, Newark, N. Y., 10/17/38	7129	4984
C102(11)	Deal sheet, first run, Oswego, N. Y., 10/17/38	7130	4985
C102(12)	Deal sheet, first run, Penn Yan, N. Y., 10/17/38	7131	4986
C102(13)	Deal sheet, first run, Perry, N. Y., 10/17/38	7132	4987
C102(14)	Deal sheet, subsequent run, Rochester, N. Y., 10/17/38	7133	4988
C102(15)	Deal sheet, Subsequent run, Rochester, N. Y., 10/17/38	7134	4989
C102(16)	Deal sheet, subsequent run, Rochester, N. Y. 10/17/38	7135	4990
C102(17)	Deal sheet, subsequent run, Rochester, N. Y., 10/17/38	7136	4991
C102(18)	Deal sheet, repeat run, Rochester, N. Y., 10/17/38	7137	4992
C102(19)	Deal sheet, subsequent run, Rochester, N. Y., 10/17/38	7138	4993
C102(20)	Deal sheet, repeat run, Rochester, N. Y., 10/17/38	7139	4994
C102(21)	Deal sheet, first run, Salamanca, N. Y. 10/17/38	7140	4995
C102(22)	Deal sheet, first run, Seneca Falls, N. Y., 10/17/38	7141	4996
C102(23)	Deal sheet, "You Can't Take It With You"	7142	4997
C102(24)	Deal sheet, First run, Amsterdam, N. Y., 10/18/38	7144	4999
C102(25)	Deal sheet, first run, Ballston, N. Y., 10/17/38	7145	5000
C102(26)	Deal sheet, first run, Carthage, N. Y., 10/17/38	7146	5001
C102(27)	Deal sheet, first run, Glens Falls, N. Y. 10/17/38	7147	5002
C102(28)	Deal sheet, second run, Glens Falls, N. Y., 10/17/38	7148	5003
C102(29)	Deal sheet, first run, Gloversville, N. Y., 10/17/38	7149	5004
C102(30)	Deal sheet, first run, Hamilton, N. Y., 10/17/38	7150	5005

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C102(31)	Deal sheet, first run, Herkimer, N. Y., 10/17/38.	7151	5006
C102(32)	Deal sheet, first run, Hudson Falls, N. Y., 10/17/38	7152	5007
C102(33)	Deal sheet, first run, Ilion, N. Y., 10/17/38	7153	5008
C102(34)	Deal sheet, first run, Little Falls, N. Y., 10/17/38	7154	5009
C102(35)	Deal sheet, first run, Malone, N. Y., 10/17/38	7155	5010
C102(36)	Deal sheet, first run, Mechanicville, N. Y. 10/17/38	7156	5011
C102(37)	Deal sheet, first run, Norwich, N. Y., 10/17/38.	7157	5012
C102(38)	Deal sheet, first run, Ogdensburg, N. Y., 10/17/38	7158	5013
C102(39)	Deal sheet, first run, Oneonta, N. Y., 10/17/38.	7159	5014
C102(40)	Deal sheet, first run, Saranac Lake, N. Y., 10/17/38	7160	5015
C102(41)	Deal sheet, first run, Tupper Lake, N. Y., 10/17/38	7161	5016
C102(42)	Deal sheet, first run, Watertown, N. Y., 10/17/38	7162	5017
C102(43)	Deal sheet, second run, Watertown, N. Y., 10/17/38	7163	5018
C102(44)	Deal sheet, first run, Whitehall, N. Y., 10/17/38.	7164	5019
C102(45)	Deal sheet, first run, Easton, Md., 10/17/38	7165	5020
C102(46)	Deal sheet, first run, Federalsburg, Md., 10/17/38	7166	5021
C102(47)	Deal sheet, first run, Hurlock, Md., 10/17/38.	7167	5022
C102(48)	Deal sheet, first run, Salisbury, Md., 10/17/38.	7168	5023
C102(49)	Deal sheet, "You Can't Take It With You," Easton, Hurlock, Federalsburg, and Salisbury.	7169	5024
C102(50)	Deal sheet, first run, Athens, Ohio, 10/17/38	7170	5025
C102(51)	Deal sheet, first run, Lexington, Ky., 10/17/38.	7171	5026
C102(52)	Deal sheet, third run, Lexington, Ky., 10/17/38.	7172	5027
C102(53)	Deal sheet, first run, Maysville, Ky., 10/17/38.	7173	5028
C102(54)	Deal sheet, first run, Paris, Ky., 10/17/38	7174	5029
C102(55)	Deal sheet, first run, Piqua, Ohio, 10/17/38	7175	5030
C102(56)	Deal sheet, first run, Richmond, Ky., 10/17/38.	7176	5031
C102(57)	Deal sheet, first run, Ashland, Ohio, 10/17/38.	7177	5032
C102(58)	Deal sheet, first run, Bellefontaine, Ohio, 10/17/38	7178	5033
C102(59)	Deal sheet, first run, Bucyrus, Ohio, 10/17/38.	7179	5034
C102(60)	Deal sheet, first run, Delaware, Ohio, 10/17/38.	7180	5035
C102(61)	Deal sheet, first run, Fostoria, Ohio, 10/17/38.	7181	5036
C102(62)	Deal sheet, first run, Kent or Ravenna, Ohio, 10/17/38	7182	5037
C102(63)	Deal sheet, repeat run, Kent or Ravenna, 10/17/38	7183	5038
C102(64)	Deal sheet, first run, Norwalk, Ohio, 10/17/38.	7184	5039
C102(65)	Deal sheet, first run, Tiffin, Ohio, 10/17/38	7185	5040
C102(66)	Deal sheet, first run, Van Wert, Ohio, 10/17/38.	7186	5041
C102(67)	Deal sheet, first run, Wooster, Ohio, 10/17/38.	7187	5042

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C102(68)	Subsequent run, deal sheet, Rochester, N. Y., 12/28/39	7188	5043
C102(69)	Deal sheet, subsequent run, Rochester, N. Y., 12/28/39	7189	5044
C102(70)	Deal sheet, first run, Rochester, N. Y., 12/28/39	7190	5045
C102(71)	Deal sheet, after fourth run, Syracuse, N. Y., 9/28/39	7191	5046
C102(72)	Deal sheet, first run, Cambridge, Md., 4/11/39	7192	5047
C102(73)	Deal sheet, first run, Corbin, Ky., 9/28/39	7193	5048
C102(74)	Deal sheet, first and repeat runs, East Rochester or Fairport, N. Y., 9/28/39	7194	5049
C102(75)	Deal sheet, first run, Laurel, Del., 4/11/39	7195	5050
C102(76)	Deal sheet, first run, Maysville, Ky., 10/23/39	7196	5051
C102(77)	Deal sheet, first run, Middlesboro, Ky., 9/28/39	7197	5052
C102(78)	Deal sheet, first run, Milford, Del., 4/11/39	7198	5053
C102(79)	Deal sheet, second run, Lexington, Ky., 3/4/40	7199	5054
C102(80)	Deal sheet, "'You Can't Take It With You," 10/17/38	7200	5055
C102(81)	Deal sheet, first run, Bowling Green, Ohio, 9/29/39	7201	5056
C180	Agreement, Columbia and Schine, 11/19/40	7202	5057
C181(1)	Deal sheet, first run, Bath, N. Y., 11/19/40	7205	5061
C181(2)	Deal sheet, subsequent run, Buffalo, N. Y., 11/19/40	7206	5062
C181(3)	Deal sheet, subsequent run, Buffalo, N. Y., 11/19/40	7207	5063
C181(4)	Deal sheet, first run, Canandaigua, N. Y., 11/19/40	7208	5064
C181(5)	Deal sheet, first run, Corning, N. Y., 11/19/40	7209	5065
C181(6)	Deal sheet, first run, Cortland, N. Y., 11/19/40	7210	5066
C181(7)	Deal sheet, first run, East Rochester or Fairport, N. Y., 11/19/40	7211	5067
C181(8)	Deal sheet, repeat run, East Rochester or Fairport, N. Y., 11/19/40	7212	5068
C181(9)	Deal sheet, first run, Geneva, N. Y., 11/19/40	7213	5069
C181(10)	Deal sheet, first run, Lockport, N. Y., 11/19/40	7214	5070
C181(11)	Deal sheet, second run, Lockport, N. Y., 11/19/40	7215	5071
C181(12)	Deal sheet, first run, Newark, N. Y., 11/19/40	7216	5072
C181(13)	Deal sheet, first run, Oswego, N. Y., 11/19/40	7217	5073
C181(14)	Deal sheet, first run, Penn Yan, N. Y., 11/19/40	7218	5074
C181(15)	Deal sheet, first run, Perry, N. Y., 11/19/40	7219	5075
C181(16)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7220	5076
C181(17)	Deal sheet, second run, Rochester, N. Y., 11/19/40	7221	5077
C181(18)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7222	5078
C181(19)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7223	5079

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C181(20)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7224	5080
C181(21)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7225	5081
C181(22)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7226	5082
C181(23)	Deal sheet, second run, Rochester, N. Y., 11/19/40	7227	5083
C181(24)	Deal sheet, second run, Rochester, N. Y., 11/19/40	7228	5084
C181(25)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7229	5085
C181(26)	Deal sheet, subsequent run, Rochester, N. Y., 11/19/40	7230	5086
C181(27)	Deal sheet, first run, Salamanca, N. Y., 11/19/40	7231	5087
C181(28)	Deal sheet, first run, Seneca Falls, N. Y., 11/19/40	7232	5088
C181(29)	Deal sheet, first run, Cambridge, Md., 11/19/40.	7233	5089
C181(30)	Deal sheet, first run, Easton, Md., 11/19/40	7234	5090
C181(31)	Deal sheet, first run, Federalsburg, Md., 11/19/40	7235	5091
C181(32)	Deal sheet, first run, Milford, Del., 11/19/40	7236	5092
C181(33)	Deal sheet, first run, Salisbury, Md., 11/19/40.	7237	5093
C181(34)	Deal sheet, first run, Salisbury, Md., 10/8/40	7238	5094
C181(35)	Deal sheet, first run, Ashland, Ohio, 11/19/40	7239	5095
C181(36)	Deal sheet, first run, Bellefontaine, Ohio, 11/19/40	7240	5096
C181(37)	Deal sheet, first run, Bowling Green, Ohio, 11/19/40	7241	5097
C181(38)	Deal sheet, first run, Bucyrus, Ohio, 11/19/40	7242	5098
C181(39)	Deal sheet, first run, Delaware, Ohio, 11/19/40.	7243	5099
C181(40)	Deal sheet, first run, Fostoria, Ohio, 11/19/40	7244	5100
C181(41)	Deal sheet, first run, Kentor Ravenna, Ohio, 11/19/40	7245	5101
C181(42)	Deal sheet, repeat run, Kent or Ravenna, Ohio, 11/19/40	7246	5102
C181(43)	Deal sheet, first run, Norwalk, Ohio, 11/19/40	7247	5103
C181(44)	Deal sheet, first run, Tiffin, Ohio, 11/19/40	7248	5104
C181(45)	Deal sheet, first run, Van Wert, Ohio, 11/19/40.	7249	5105
C181(46)	Deal sheet, first run, Athens, Ohio, 11/19/40	7250	5106
C181(47)	Deal sheet, first run, Corbin, Ky., 11/19/40	7251	5107
C181(48)	Deal sheet, second run, Harlan, Ky., 11/19/40.	7252	5108
C181(49)	Deal sheet, first run, Lexington, Ky., 11/19/40.	7253	5109
C181(50)	Deal sheet, second run, Lexington, Ky., 11/19/40	7254	5110
C181(51)	Deal sheet, third run, Lexington, Ky., 11/19/40	7255	5111
C181(52)	Deal sheet, second run on "Mr. Smith Goes to Washington," Lexington, Ky., 11/19/40	7256	5112
C181(53)	Deal sheet, first run, Maysville, Ohio, 11/19/40.	7257	5113
C181(54)	Deal sheet, first run, Middlesboro, Ky., 11,19,40	7258	5114

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
C181(55)	Deal sheet, first run, Paris, Ky., 11/19/40	7259	5115
C181(56)	Deal sheet, first run, Piqua, Ohio, 11/19/40	7260	5116
C181(57)	Deal sheet, first run, Richmond, Ky., 11/19/40	7261	5117
C181(58)	Deal sheet, first run, Amsterdam, N. Y., 11/19/40	7262	5118
C181(59)	Deal sheet, first run, Ballston, N. Y., 11/19/40	7263	5119
C181(60)	Deal sheet, first run, Carthage, N. Y., 11/19/40	7264	5120
C181(61)	Deal sheet, first run, Glens Falls, N. Y., 11/19/40	7265	5121
C181(62)	Deal sheet, second run, Glens Falls, N. Y., 11/19/40	7266	5122
C181(63)	Deal sheet, first run, Gloversville, N. Y., 11/19/40	7267	5123
C181(64)	Deal sheet, second run, Gloversville, N. Y., 11/19/40	7268	5124
C181(65)	Deal sheet, first run, Granville, N. Y., 1/23/41	7269	5125
C181(66)	Deal sheet, first run, Hamilton, N. Y., 11/19/40	7270	5126
C181(67)	Deal sheet, first run, Herkimer, N. Y., 11/19/40	7271	5127
C181(68)	Deal sheet, first run, Hudson Falls, N. Y., 11/19/40	7272	5128
C181(69)	Deal sheet, first run, Ilion, N. Y., 11/19/40	7273	5129
C181(70)	Deal sheet, first run, Little Falls, N. Y., 11/19/40	7274	5130
C181(71)	Deal sheet, first run, Malone, N. Y., 11/19/40	7275	5131
C181(72)	Deal sheet, first run, Mechanicville, N. Y., 1/23/41	7276	5132
C181(73)	Deal sheet, first run, Odgensburg, N. Y., 11/19/40	7277	5133
C181(74)	Deal sheet, first run, Oneonta, N. Y., 11/19/40	7278	5134
C181(75)	Deal sheet, first run, Saranac Lake, N. Y., 11/19/40	7279	5135
C181(76)	Deal sheet, first run, Tupper Lake, N. Y., 11/19/40	7280	5136
C181(77)	Deal sheet, first run, Watertown, N. Y., 11/19/40	7281	5137
C181(78)	Deal sheet, second run, Watertown, N. Y., 11/19/40	7282	5138
C181(79)	Deal sheet, first run, Whitehall, N. Y., 11/19/40	7283	5139
S73	Agreement, Palace Lockport Corporation, et al. and N. Dipson, et al., 10/10/36	7284	5141
S74	Agreement, Jack Frisch, et al. and J. M. Schine, et al., 1/11/39	7285	5141
S75	Agreement, Charles Brown, et al., and Phoenix Amusement Company, 1/14/39	7286	5142
D1	Letter, Long to Schmertz, Fox, 11/8/35	7287	5143
D2	Letter, Long to McEvoy, RKO, 10/30/36	7288	5144
D3	Letter, Long to Schmertz, Fox, 4/4/35	7289	5145
D4	Letter, Long to Manager, RKO, 4/14/35	7290	5146
D5	Letter, Long to Drew, MGM, 4/20/38	7291	5147
D6	Letter, Drew to Long, 4/12/38	7292	5148
D7	Letter, Long to Mgr., Warners, 4/14/35	7293	5149

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
D8	Letter, Long to McEvoy, RKO, 10/7/35	7294	5150
D9	Letter, Long to McEvoy, RKO, 10/30/35	7295	5151
D10	Contract recommendation for Memorial Theatre, Mt. Vernon, Ohio, 9/8/37	7296	5152
D12	Letter, Himmelein, Paramount, to Mrs. Moore, 1/5/36	7299	5153
D13	Letter, Moore to Silverman, 4/12/36	7300	5153
D14	Letter, Moore to May, 4/13/36	7302	5154
D15	Letter, Moore to Lazar, 5/12/36	7304	5154
D16	Letter, Moore to Lichter, (Fox) 6/1/36	7305	5155
D25	Contract, Angelas and Norwalk Theatre Corp., 5/19/39	7307	5155
D27	Letters, 1/18/40 and 2/3/40—United Artists to A. Felice	7311	5159
D38	Letter, 8/24/35, Charnas to Paramount	7313	5161
D43	Copy of resolution of stockholders of Bellefontaine Amusement Co.	7314	5161
D44	Agreement between Daniel Gutilla and Bellefontaine Amusement Co.; 7/28/31	7315	5162
D46	Agreement, March 18, 1937, Yudelewitz, Willis and Belpik Theatre Corp. re lease of Princess and proposed new theatre	7317	5162
D50	Letter, Kaplan to Grafiades, 1/16/34	7320	5165
D51	Telegram, 1/30/34, Lichtman to Reliance	7321	5166
D52	Telegram, 1/31/34, Lichtman to Reliance	7322	5166
D53	Telegram, 2/26/34, Lichtman to Reliance	7323	5166
D54	Telegram, 5/10/34, Lichtman to Reliance	7324	5167
D55	Telegram, 6/12/34, Lichtman to Reliance	7325	5167
D56	Letter, 6/14/34, Bykowski to Grafiades	7326	5167
D57	Telegram, 6/23/34, Lichtman to Reliance	7327	5168
D58	Letter, 11/7/34, U. A. to Grafiades	7328	5168
D59	Letter, 1/18/35, Bykowski to Grafiades	7329	5169
D60	Letter, 9/21/35, Kaplan to Dickinson	7330	5169
D61	Letter, 11/13/35, Kelly to Reliance	7331	5170
D116	Photostat of Syracuse Post-Standard, Sept. 18, 1941	7332	5170
D120	Copy of letter, Lux to Wallace, 10/16/41	7333	5171
D122	Photograph of Capitol Theatre, Auburn, about 1/1/39	7334	5172
D130	Letter, Wallace to Paramount, 7/4/32	7335	5173
D131	Letter, Wallace to U. A., 6/22/23	7336	5174
D132	Letter, Fox to Wallace, 1/27/39	7338	5175
D133	Copy of letter, Boumansour to Department of Justice, April 4, 1941	7337	5176
D137	Salesman's report, 2/4/37, by Struwe	7339	5176
D138	Photograph of Smalley billboard on Gloversville, Johnstown road	7340	5176
D139	Photograph of Smalley billboard in Gloversville	7341	5176
D143	Letter, Picker to Smalley, 6/3/40	7342	5177
D144	Letter, Moross to Smalley, 11/13/39	7343	5178

EXHIBITS PRINTED IN FULL—Continued

		Original	Print
D145	Advertisement of Smalley's Norwich Theatre	7344	5179
D146	Photograph of Smalley's Norwich billboard showing 10¢–20¢ prices, Jan. 1942	7345	5180
D148B	Letter attached to contract of 7/13/35, Brand to Mooney	7346	5181
D148C	Agreement, 7/13/35, signed for Vitagraph by W. J. Brandt and State Bucyrus Co. by M. Bryer	7347	5181
D148E	Notification of cancellation, 12/2/35, house taken over by Schine. New contract cancels contract No. 4447 dated 7/13/35 attached to contract exhibit 148D re First National Product	7348	5182
D148F	Same for Warner product	7349	5182
D150	Memorandum showing cost of acquisition and improvements to various Schine theatres, etc.	7350	5183
D153	Copy of ordinance No. A of Board of Council, City of Paris, 10/5/37	7356	5185
D153A	Permit from City of Paris, 10/7/37	7358	5187
D154	Photostat of page from Bucyrus Telegraph—Forum, 9/6/35 showing advertisement of "Page Miss Glory" at State Theatre	7359	5188

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D156	Memorandum consisting of 1 sheet dated 10/3/41, written by Rowell—1st proposition	7360	5189
D157	Memorandum consisting of 1 sheet dated 10/3/41, written by Rowell—2nd proposition	7361	5189
D158	Memorandum consisting of 1 sheet dated 10/3/41, written by Rowell—3rd proposition	7362	5190
D163	Report (salesman) written by Rowell 10/10/41 re counter-proposition made by Rowell to to Wallace	7363	5190
D170	Copy of letter, Mooney (War) to Bryer, 9/9/35	7364	5190
D171	Percentage engagement report on Page Miss Glory at State, Bucyrus on 9/8–10/35—signed by M. Bryer and refers to contract No. 4447	7365	5190
D173	Warner Bros. and First National exhibition contract with Belpik Theatre Corp., Medina, Ohio, 10/27/37	7367	5190
D174	Copy of telegram, Himes to Lauer, 6/15/38	7369	5191
D176	Letter, Lauer to Himes, 6/16/38	7370	5191
D177	Copy of letter, Himes to Lauer, 6/17/38	7372	5192
D178	Letter, Lauer to Himes, 6/23/38	7373	5193

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		Original	Print
81	Lease, 2/14/41, Boumansour and Schine, Plaza, Malone	7374	5193
83	Agreement, 8/23/40, Croucher and Schine, re Crescent, Newark	7381	5193
85	Agreement, 5/27/37, Young and Whitney, Inc. and Perry Theatrical Corp., re Ilion	7386	5195
96	Agreement, Shreffler and Belpik, re Shelby, Ohio, 9/21/37	7406	5196
111	Agreement, 8/12/38, Chesapeake and Insley-employment	7412	5200
118	Agreement, 9/29/38, Chesapeake Theatres Corp. and Gollner-employment, Salisbury	7419	5203
644A	Warner letter agreements (1934/5 season) and deal sheets	7426	5206
646	Lease, Gutilla and Schine Theatrical Co., Inc., April 30, 1938, covering Strand Theatre, Bellefontaine, Ohio	7435	2512
647	Lease, Gutilla and Schine Theatrical Co., Inc., July 1, 1940, covering Strand theatre, Bellefontaine, Ohio	7551	5214
806	Copy of newspaper page, Canandaigua "Daily Message," 5/10/38	7450	5217
807	Copy of newspaper page, Perry Record, 7/11/35.	7451	5218
811	Lease, Syracuse-Strand to S. K. E., 8/24/39 (2 yrs.)	7452	5219
854	Salamanca Republic, 12/24/38	7472	5221
871	Agreement, Y. & W., Inc. and Perry Theatre Corp., 12/10/36	7473	5221
872	Agreement, Whitney & Pierce and J. G. Selmser, 5/24/37	7476	5223
883	Proposed lease, City of Ogdensburg to L. Carkey, 9/28/40, unsigned	7479	5225
910	Lease, S. Boal and Sidney Theatre Corp., 5/16/31, Bijou, Piqua, Ohio, to 6/30/34	7486(1)	5226
911	Lease, Boal Estate to Belpik Theatre Corp., 2/23/34, Bijou, Piqua, Ohio, to 2/28/36	7487	5227
912	Lease, Boal Estate to Belpik Theatre Corp., 2/15/36, Bijou, Piqua, Ohio, to 2/28/38	7491(1z	5229
913	Lease, Boal Estate to Belpik Theatre Corp., 11/27/37, Bijou, Piqua, Ohio, to 2/28/40		
914	Lease, Boal Estate to Belpik Theatre Corp., 1/10/40, Bijou, Piqua, Ohio, to 2/28/45	7492	5230
915	Lease and option to purchase, Landry, et al. to Schine Chain Theatres, Inc., 10/25/41, Star, Ogdensburg, to 9/6/46	7497	5232
916	Lease and option to purchase, Ogdensburg Theatre Co. to Schine Chain Theatres, Inc., 8/20/36, Star, Ogdensburg, to 9/5/41	7513	5234

EXHIBITS PRINTED IN PART—Continued

		Original	Print
917	Lease, Ogdensburg Strand Theatre Co. and Schine Chain Theatres, Inc., 9/6/26, Star, Ogdensburg, to 9/5/36	7525(1)	5236
918	Lease, Henry and Reb. Pohl to J. Steel and Wm. Selman, 10/31/34, Forum, Norwalk, to 2/31/44	7526	5237
919	Agreement, Pohl and Norwalk Theatre Corp., Jan. 5, 1942, cancels Forum, Norwalk lease	7536	5239
920	Lease, G. W. Croucher and Newark Theatres, Inc., 4/15/26, Crescent, Newark, to 4/14/31	7540	5239
921	Lease, Rose Croucher and Dominion Operating Co., Ltd., 5/15/34, Crescent, Newark, to 9/30/36	7544	5239
922	Extension agreement, Rose Croucher and Dominion Operating Co., Ltd., 5/14/36, Crescent, Newark, to 9/30/41	7546	5240
923	Lease, J. J. Lanigan and Hi-Art Theatre Corp., 1/8/26, Hi-Art, Lockport, to 1/9/36	7548	5241
924	Lease, J. J. Lanigan and Schine Theatrical Co., Inc., 5/25/33, Hi-Art, Lockport, to 1/9/36	7569	5242
925	Option to renew, J. J. Lanigan and Schine Theatrical Co., Inc., 10/5/33, Hi-Art, Lockport, to 1/9/41	7588	5242
926	Agreement, J. J. Lanigan and Schine Theatrical Co., Inc., 12/31/37, Hi-Art, Lockport, to 1/9/51	7591	5243
927	Lease, Odd Fellows Temple Ass'n. and Schine Theatrical Co., Inc., 6/29/36, Hippodrome, Little Falls, to 6/30/41	7597	5244
928	Agreement, United Odd Fellows Ass'n. and Schine Ilion Corp., 4/18/42, Temple, Ilion, to 5/4/47	7607	5246
929	Lease Charles and C. W. Mickey to C. M. Kahn, 6/25/35, Roxy, Fostoria, Ohio, to 6/30/40	7610	5248
930	Lease, Charles and C. W. Mickey to Fostoria Theatre Corp., 6/11/40, Roxy, Fostoria, Ohio, to 6/30/45	7614	5251
931	Lease, National City Bank of Cleveland, Trustee to Crawford Theatre Co., 4/1/36, Southern, Bucyrus, Ohio, to 3/31/41	7621	5252
932	Lease, National City Bank of Cleveland, Trustee to Crawford Theatre Co., 4/1/41; Southern, Bucyrus, Ohio, to 3/31/43	7631	5253
933	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/1/33, Opera House, Bellefontaine, to 8/31/34	7640	5254
934	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/3/37, Opera House, Bellefontaine, to 8/31/38	7646	5255

EXHIBITS PRINTED IN PART—Continued

		Original	Print
935	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/31/38, Opera House, Bellefontaine, to 8/31/39	7653	5255
936	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/31/39, Opera House, Bellefontaine, to 8/31/40	7658	5256
146	Contract, United Artists—Schine—undated rider—"My son, Monte Cristo, Two Years Before Mast, Valentino"	7844	5353
155	Contract, United Artists—Schine, undated rider—"Great Dictator"	7847	5356
159	Contract, United Artists—Schine, undated rider—"Westerner"	7849	5358
192	Contract, Group K-4, dated December 15, 1936, Kentucky or Ben Ali or Strand or State theatres, Lexington, Kentucky. Contract dated Feb. 17, 1937, Hippodrome or Kentucky Theatres, Corbin, Kentucky	7855	5364
268	Contract, Group S-11 for New or Ulman's Theatre, Salisbury, Maryland, dated July 18, 1939	7856	5365
324(A-C)	Fox contracts for Norwich, Amsterdam, Little Falls, Massena, Norwalk, Tiffin, Mt. Vernon, Corbin, Paris, Van Wert, Bucyrus	7857	5366
326(A-I)	Fox contracts for Corning	7864	5373
328(A-D)	Fox contracts for Watertown	7873	5382
330(A-C)	Fox contract for Van Wert	7878	5387
333(A-)	Fox contract for Lexington	7881	5390
339(A-J)	Paramount contracts for Auburn, Norwich, Amsterdam, Little Falls, Tiffin, Corbin, Paris, Van Wert, Bucyrus, Delaware	7882	5391
341(A-E)	Paramount contracts for Corning	7893	5402
343(A-G)	Paramount contracts for Watertown	7898	5407
344(A-C)	Paramount contracts for Van Wert, Ohio	7905	5414
563	Contract for First National Pictures for Colonial Theatre dated May 18, 1936	7908	5417
569	Contract with Belpik Theatres Corp. relative to the Civic or Roxy Theatres with Warner Bros., dated October 21, 1936	7909	5418
604(A-J)	Loew's contracts for Bucyrus, Van Wert, Tiffin, Medina, Mt. Vernon, Corbin, Lockport, Norwich, Amsterdam, Massena, Little Falls.	7910	5419
611(A-B)	Loew's contracts for Corning	7922	5431
613(A-B)	Loew's contracts for Watertown	7925	5434
622A	RKO contracts for unspecified town, Norwalk, Van Wert, Tiffin, Corbin, Paris, Shelby, Mt. Vernon, Delaware, Bucyrus, Auburn, Norwich, Amsterdam, Little Falls	7927	5436
628(A-F)	Photostats of RKO contracts for Corning, N. Y., 1933-34 and 1934-35 seasons	7928	5437

EXHIBITS PRINTED IN PART—Continued

		Original	Print
635(A-K)	Warner contracts for Auburn, Norwich, Amsterdam, Little Falls, Norwalk, Van Wert, Fostoria, Medina, Tiffin, Corbin, Paris	7934	5443
637(A-H)	Warner contracts for Corning	7952	5461
642(A)	Warner contracts for Cumberland, St. Michaels, Easton, Maysville, Federalsburg, Hurlock, Harlan, Salisbury, Richmond, Paris, Corbin.	7971	5480
672(A-F)	Columbia contracts for Norwalk, Van Wert, Tiffin, Corbin, Paris, Delaware, Norwich, Amsterdam, Little Falls, Ashland	7972	5481
698(A & B)	Contracts Universal and Schine, State Theatre, Corning, 1933–34	7978	5487
698(c)	Contract Universal and Gaby & Cohen, Plaza Theatre, Corning, 1933–34	7980	5489
720	Contract, Warner Bros. & Fenyvessy, Madison, 7/20/31	7981	5490
721	Contract, First National & Fenyvessy, Madison, 7/20/31	7982	5491
722	Contract, Warner Bros. & Fenyvessy, Madison, 11/14/32	7983	5492
723	Contract, First National & Fenyvessy, Madison, 11/14/32	7984	5493
724	Contract, Warner Bros. & Fenyvessy, Madison, 11/20/33	7985	5494
725	Contract, First National & Fenyvessy, Madison, 11/20/33	7986	5495
726	Contract, RKO & Fenyvessy, Madison, 1/15/31.	7987	5496
727	Contract, RKO & Fenyvessy, Madison, 1/15/31.	7988	5497
728	Contract, RKO & Fenyvessy, Strand and Madison, 9/28/32	7989	5498
729	Contract, RKO & Fenyvessy, Madison, 12/8/33.	7990	5499
730	Contract, RKO & Fenyvessy, Monroe, 12/8/33.	7991	5500
731	Contract, RKO & Fenyvessy, 1935–36, Monroe, 1/25/35	7992	5501
732	Contract, RKO & Fenyvessy, 1935–36, Madison, 1/16/35	7993	5502
733	Contract, Paramount and Fenyvessy, Madison, 12/11/31	7994	5503
734	Contract, Paramount and Fenyvessy, Madison, 3/2/33	7995	5504
735	Contract, Paramount and Fenyvessy, Monroe, 10/29/34	7996	5505
736	Contract, Paramount & Fenyvessy, Madison, 10/29/34	7997	5506
737	Contract, Loew's & Fenyvessy, 1934–35, Monroe, 11/28/34	7998	5507
738	Contract, Loew's & Fenyvessy, 1934–35, Madison, 11/28/34	7999	5508
739	Contract, Loew's & Fenyvessy, 1935–36, Madison, 10/11/35	8000	5509

EXHIBITS PRINTED IN PART—Continued

		Original	Print
740	Contract, Loew's & Fenyvessy, 1935–36, Monroe, 10/11/35	8001	5510
741	Contract, Loew's & Fenyvessy, 1937–38, Madison, 6/23/38	8002	5511
742	Contract, Loew's & Fenyvessy, 1937–38, Monroe, 6/23/38	8003	5512
743	Contract, Loew's & Fenyvessy, 1938–39, Madison, 6/23/38	8004	5513
744	Contract, Loew's & Fenyvessy, 1938–39, Monroe, 6/23/38	8005	5514
745	Contract, Fox and Fenyvessy, 1932–33, Madison, 10/2/32	8006	5515
746	Contract, Fox and Fenyvessy, 1933–34, Madison, 8/18/33	8007	5516
747	Contract, Fox and Fenyvessy, 1933–34, Monroe, 8/18/33	8008	5517
748	Contract, Fox and Fenyvessy, 1934–35, Monroe, 3/20/35	8009	5518
749	Contract, Fox and Fenyvessy, 1934–35, Madison, 3/20/35	8010	5519
750	Contract, Columbia and Fenyvessy, 1937–38, Monroe, 6/18/37	8011	5520
751	Contract, Columbia and Fenyvessy, 1936–37, Madison, 11/2/36	8012	5521
752	Contract, Warner and Fenyvessy, after Schine Madison, 10/11/35	8013	5522
753	Contract, Warner and Fenyvessy, Monroe, 12/10/37	8014	5523
754	Contract, Warner and Fenyvessy, Madison, 12/10/37	8015	5524
755	Contract, RKO and Fenyvessy, Madison, 12/7/36	8016	5525
756	Contract, RKO and Fenyvessy, Monroe, 12/7/36	8017	5526
757	Contract, Loew's—Liberty, 10/11/34	8018	5527
758	Contract, Loew's—Dixie or State, 10/11/34	8019	5528
759	Contract, Loew's—State or Dixie, 10/11/34	8020	5529
760	Contract, Loew's—Riviera or Liberty, 10/12/34	8021	5530
761	Contract, Loew's—State or Dixie, 7/26/35	8022	5531
762	Contract, Loew's State or Dixie, 7/26/35	8023	5532
763	Contract, Loew's Liberty, 7/26/35	8024	5533
764	Contract, Loew's Riviera or Liberty, 7/26/35	8025	5534
779	Contract, RKO and Fenyvessy, Madison, 11/30/32	8026	5535
780	Contract, RKO and Fenyvessy, Monroe, 1/14/32	8027	5536
781	Contract, RKO and Fenyvessy, Madison, 1/14/38	8028	5537
782	Contract, RKO and Fenyvessy, Monroe, 9/15/38	8029	5538

EXHIBITS PRINTED IN PART—Continued

		Original	Print
783	Contract, RKO and Fenyvessy, Madison, 9/15/38	8030	5539
784	Contract, Fox and Fenyvessy, 12/8/31	8031	5540
785	Contract, MGM–Fenyvessy, 1/15/37	8032	5541
786	Contract, Warner–First National and Fenyvessy, 11/5/36	8033	5542
787	Contract, Warner–First National and Fenyvessy, 11/5/36	8034	5543
788	Contract, Warner–First National and Fenyvessy, 1/30/35	8035	5544
789	Contract, First National and Fenyvessy, 1/30/35	8036	5545
791	Contract, 1/6/39, Columbia and Fenyvessy, Madison	8037	5546
792	Contract, 1/6/39, Columbia and Fenyvessy, Monroe	8038	5547
793	Contract, Columbia and Belinson, Little, Craig's Wife—Theodora Goes Wild—2nd Pennies from Heaven	8039	5548
794	Contract, Columbia and Belinson, Little, When You Are in Love—2nd	8040	5549
795	Contract, Columbia and Belinson, Little, Holiday—2nd	8041	5550
796	Contract, Columbia and Belinson, Little, Awful Truth—2nd	8042	5551
797	Contract, Columbia and Belinson, Little, Lost Horizon—2nd	8043	5552
798	Contract, Columbia and Belinson, Little, You Can't Take It With You—2nd	8044	5553
799	Contract, Columbia and Belinson, Little, Mr. Smith Goes to Washington—2nd	8045	5554
813	Contract, RKO and Auburn Capitol Theatrical Corp., Capitol, Auburn, 11/15/32	8046	5555
814	Contract, Paramount and Auburn Capitol Theatrical Corp., Capitol, Auburn, 3/3/34	8047	5556
829	Photostatic copy of Fox contract, 8/6/37	8048	5557
840	Contract, Fox and Vournakis, 10/21/35, 1935–36	8049	5558
841	Contract, Fox and Vournakis, 6/22/36, 1936–37	8050	5559
842	Contract, Fox and Vournakis, 11/2/36, 1936–37	8051	5560
847	Contract, Fox and Vournakis, 10/4/33, 1933–34	8052	5561
848	Contract, Warner and Vournakis, 11/20/33, 1933–34, Strand	8053	5562
849	Contract, Warner and Vournakis, 11/8/35, 1935–36, Strand	8054	5563
850	Contract, Warner and Vournakis, 12/7/36, 1936–37, Strand	8055	5564
851	Contract, Warner and Vournakis, 10/18/37, 1937–38, Strand	8056	5565
852	Contract, Warner and Vournakis, 9/18/39, 1939–40, Strand	8057	5566

EXHIBITS PRINTED IN PART—Continued

		Original	Print
853	Contract, Warner and Vournakis, 11/22/40, 1940–41, Strand	8058	5567
937	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/14/40, Opera House, Bellefontaine, to 8/31/41	7664	5256
938	Lease, Opera Block Co. to Schine Theatrical Co., Inc., 8/18/41, Opera House, Bellefontaine, to 8/31/42	7669	5256
939	Lease, Dan Gutilla and Schine Enterprises, Inc., 7/28/31, Strand, Bellefontaine, to 6/1/34	7675	5256
940	Lease, Dan Gutilla and Schine Treatrical Co., Inc., 3/29/34, Strand, Bellefontaine, to 6/1/36	7681	5258
941	Lease, Dan Gutilla and Schine Theatrical Co., Inc., 5/22/36, Strand, Bellefontaine, to 6/1/38	7685	5259
942	Lease, Thos. Osborne to M. A. Shea, 3/9/18, Jefferson, Auburn, to 10/15/28	7690	5261
943	Lease, Thos. Osborne Estate to M. A. Shea, 8/5/29, Jefferson, Auburn, to 10/15/34	7696	5261
944	Lease, M. A. Shea to Upstate Amusement Co., 5/5/37, Jefferson, Auburn, to 10/15/41	7702	5262
945	Lease, Osborne Estate to Upstate Amusement Co., 7/9/38, Jefferson, Auburn, to 5/15/48	7712	5263
946	Agreement, Hi-Art Theatre Corp. and Lockport Enterprises, Inc., 10/1/27, Assigns lease of Hi-Art, Lockport, N. Y.	7716	5264
947	Lease, J. & S. Palfi to Sidney Theatre Corp., 5/20/36, Opera House, Kent, Ohio, to 5/31/41	7720	5265
960	Lease, 9/16/33, City of Wooster to Wooster Theatres, Inc., Opera House, Wooster, Ohio, to 8/31/35	7724	5266
961	Agreement, 10/3/35, City of Wooster to Wooster Theatres, Inc., Opera House, Wooster, Ohio, extends lease to 8/31/38	7730	5271
962	Lease, pursuant to resolution of 4/4/38, City of Wooster to Wooster Theatres, Inc., Opera House, Wooster, Ohio, to 8/31/41	7733	5273
982	Lease, Bates Estate to G-C Theatre Corp., 6/15/33, Richardson, Oswego, and exercise of option to 7/31/38	7736	5275
983	Lease, Bates Estate to G-C Theatre Corp., 7/5/38, Richardson, Oswego, and exercise of option to 7/31/40	7741	5277
984	Lease, Bates Estate to G-C Theatre Corporation, 6/17/40, Richardson, Oswego, and exercise of option to 7/31/40	7747	5277
1008	Agreement 11/6/41, between Pohe and Norwalk Theatre Corp.	7749	5277
S68	Agreement, J. M. Schine, et al. and M. A. Shea, 8/16/35, re purchase of one-half interest, Amsterdam, N. Y.	7754	5281

EXHIBITS PRINTED IN PART—Continued

		Original	Print
S69	Agreement, Bieberson and Belpik Theatre Corp., 1/17/36, re purchase of one-half interest in Athens, Ohio	7762	5285
S70	Agreement, Bieberson and Schine Delaware Corporation, 1/17/36, re purchase of one-half interest	7766	5287
S71	Agreement, J. M. Schine, et al. and Maurice A. Shea, 8/16/37, re purchase of Shea interest	7769	5289
S72	Bill of sale, John Buchmann to Schine Delaware Corp., 3/21/38	7778	5293
S76	Agreement, Hoppes and Chesapeake Theatre Corporation, 7/16/40, re purchase of Wicomico, Salisbury, Md.	7785	5294
S77	Bill of Sale, Jos. Constantino to Schine Theatre Company, Inc.	7790	5299
D112	Map of City of Rochester showing location of theatres	7793	5302

DIGESTS OF LICENSE CONTRACT EXHIBITS

Statement re digests of License Contract Exhibits		7794	5303
P14	Contract, Paramount 1938-38—11/4/38—Mt. Vernon	7795	5304
P15	Contract, Paramount 1939-40, 1940-41—Mt. Vernon, second run	7797	5306
P19	Contract, Scott—Universal—First run	7798	5307
P23	Contract, 9/1/39, Columbia—Murphy	7799	5308
P24	Contract, 9/1/39, Columbia—Murphy	7800	5309
P27	Contract, 9/21/39, Metro—Schine, Kentucky Theatre, Corbin	7801	5310
P28	Contract, 12/1/38, Paramount—Schine, Hippodrome or Kentucky	7802	5311
P29	Contract, 6/6/39, Fox—Schine, Corbin	7803	5312
P30	Contract, 6/6/39, Fox—Schine, Corbin	7805	5314
P31	Contract, 1/23/39, Fox—Schine, Corbin	7806	5315
P37	Contract, 11/10/38, Universal—Schine, Corbin	7807	5316
P42	Contract, 12/2/38, Fox—Schine, Corbin	7808	5317
P61	Contract, 9/28/35, MGM—Bryer	7809	5318
P62	Contract, Warners—Schine, 7/25/35, Bucyrus	7811	5320
P66	Contract, Fox—Charnas, 8/20/34, Southern, Bucyrus	7812	5321
P67	Contract, Fox—Schine, 8/5/35, Bucyrus	7813	5322
P68	Contract, Fox and Schine, 8/5/35, Bucyrus	7814	5323
P69	Contract, Paramount—Charnas, 9/11/34, Bucyrus	7815	5324
P70	Contract, Paramount—Schine, 9/17/35, Bucyrus	7816	5325
122	Contract, United Artists—Schine—8/22/33—"I Knew Her When"	7818	5327
126	Contract, United Artists—Schine, 11/18/35—"Call of the Wild"	7821	5330

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
128	Contract, United Artists—Schine, 11/18/35—"Dark Angel"	7823	5332
129	Contract, United Artists—Schine, 10/2/35—"Barbary Coast"	7825	5334
131	Contract, United Artists—Schine—undated rider—"Garden of Allah, Star is Born and untitled Colman"	7830	5339
135	Contract, United Artists and Schine—undated rider—"Vogues"	7833	5342
138	Contract, United Artists and Schine—undated rider—"Goldwyn Follies, Hurricane, Marco Polo"	7836	5345
140	Contract, United Artists—Schine—undated rider—"Stella Dallas, Dead End"	7838	5347
141	Contract, United Artists—Schine—undated rider—"Cowboy and Lady, Lost Frontier, Daring Age"	7841	5350
863	Contract, Warners and Boumansour	8059	5568
865	Contract, Paramount to Y & W Inc., 8/20/35, Capitol, Ilion	8060	5569
866	Contract, Paramount to Y & W Inc., The Crusades, undated	8061	5570
867	Contract, Columbia to Y & W Inc., (application undated)	8062	5571
868	Contract, Warners & First National and Y & W Inc., 10/17/35, 1935-36	8063	5572
869	Contracts (5), United Artists & Y & W Inc., 2/1/36, These Three, Strike Me Pink, Splendor, Barbary Coast and Dark Angel	8064	5573
870	Contracts (2), RKO—Y & W Inc., 1/20/36	8065	5574
874(A-D)	Contracts (4), RKO—Y & W Inc., 1932/33, 33/34, 34/35, 1936/37	8066	5575
875(A-E)	Contract, Warner—Y & W, Inc., 1932-33, 2/6/33	8070	5579
	Contract, First National—Y & W, Inc., 1932-33, 2/6/33	8071	5580
	Contract, First National—Y & W, Inc., 1933-34, 10/28/33	8072	5581
	Contract, Warner—Y & W, Inc., 1933-34, 10/28/33	8073	5582
	Contract, First National—Y & W, Inc., 1934-35, 10/11/34	8074	5583
	Contract, Warner—Y & W, Inc., 1934-35, 10/11/34	8075	5584
	Contract, Warner—First National—Y & W, Inc., 1935-36, 10/17/35	8076	5585
	Contract, Warner—First National—Y & W, Inc., 1936-37, 8/31/36	8077	5586
876(A-D)	Contracts (4), MGM—Y & W, Inc., 1933/34, 34/35, 35/36, 36/37	8078	5587

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
877(A-E)	Contracts (5), Fox—Y & W, Inc., 1933–34, 34/35, 35/36, 35/36, 36/37	8082	5591
878(A-E)	Contracts (5), Paramount—Y & W, Inc., 1932/33, 33/34, 34/35, 35/36, 36/37	8087	5591
905(A-E)	Contracts (5), Paramount and Boumansour	8092	5601
906(A-H)	Contracts (8), Loew's Inc., and Boumansour	8097	5606
907(A-E)	Contracts (5), RKO and Boumansour, 1936/37, 37/38, 38/39, 39/40	8105	5614
908(A-E)	Contracts (5), Vitagraph, Inc. and Boumansour, 1938/39, 39/40	8110	5619
909	Contract, Vitagraph, Inc. and Boumansour, app. 6/14/37	8115	5624
948	Contracts (2), War. & F. N. with State-Bucyrus, 8/20/34	8116	5625
949	Contract, MGM and Long, Memorial, Mt. Vernon, 1937–38, 5/31/38	8118	5627
950	Contract, MGM and Long, 5/31/38, Memorial, Mt. Vernon, 1938–39	8119	5628
951	Contract, MGM and Long, 12/14/36, Memorial, Mt. Vernon, 1936–37	8120	5629
952	Contract, MGM and Long, Memorial, Mt. Vernon, 1936–37, Great Ziegfield	8121	5630
953	Contract, Columbia and Schine, Forum, Norwalk, 1936–37	8122	5631
954	Contract, Columbia and Frederick, Moose, Norwalk, 1935–36	8123	5632
955	Contract, Columbia and Schine, Colonial, Norwich, N. Y. 1936–37	8124	5633
956	Contract, Columbia and Garl Moore, Ohio, Van Wert, 1935–36	8125	5634
957	Contract, Columbia and Schine, Van Wert or Strand, 1936–37, 10/5/36	8126	5635
963	Contract, Fox & S. K. E., 10/14/41, Paramount, Strand, 8/8/41	8127	5636
964	Contract, Fox & S. K. E., 10/14/41, Eckel (move-over)	8128	5637
965	Contract, Fox and Syracuse Cameo Theatre, Inc., 9/25/41, Cameo	8129	5638
966	Contract, Fox and Syracuse Novelty Theatre, Inc., 9/24/41, Novelty	8130	5639
967	Contract, Fox and Syracuse Happy Hour Theatre, Inc., 9/24/41, Happy Hour	8131	5640
968	Contract, Fox and Larkin, 9/24/41, Harvard	8132	5641
969	Contract, Fox and Theatorium Co., 10/17/41, Turn Hall	8133	5642
970	Contract, Fox and Sidney Grossman, 10/25/41, Elmwood	8134	5643
971	Contract, Fox and Corrin, 10/30/31, Alcazar	8135	5644
972	Contract, Fox and Merriman, 10/30/31, Franklin	8136	5645

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
973	Contract, Fox and Matty Dale Amusement Corp., 10/30/31, Hollywood	8137	5646
974	Contract, Fox and Stotnick & Cantor, 12/18/41, Acme	8138	5647
975	Contract, Fox and Stotnick, 12/18/41, Globe	8139	5648
976	Contract, Fox and Stotnick, 1/12/42, Grant	8140	5649
977	Contract, Fox and Davidson, 1/21/42, Avon	8141	5650
978	Contract, Fox and Erin Theatre Co., 4/13/42, Erin	8142	5651
979	Contract, Fox and Kallett, Regent, Syracuse	8143	5652
981(1-81)	Contracts, Loew's and Schine, 9/6/40, 1940-41 (81)	8144	5653
981(82-83)	Contracts (2), Loew's and Schine, 11/22/40, 1940-41	8224	5734
W6(1-17)	First run contracts (17), 4/3/36	8262	5736
W6(19-41)	First run contracts (22)	8243	5753
W8(1-2)	First run contracts (2), 8/16/35	8266	5776
W8(3)	First run contract (1), 8/8/35	8268	5778
W8(4-17)	First run contracts (13), 8/16/35	8269	5779
W33(16)	Contracts, First National-Warner-Schine, Rochester, 9/11/34	8283	5793
W33(17)	Contracts, First National-Warner-Schine, Rochester, 9/11/34	8285	5795
W18	Contract, Warner Bros.-First National & Schine, 8/5/35, Liberty or Riviera, Rochester, N. Y.	8287	5797
W19	Contract, Warners-First Nat'l & Schine, 8/5/35, State or Dixie, Rochester, N. Y	8288	5798
R3	Contract, RKO and Schine, 11/20/36, Auburn, N. Y.	8289	5799
R4	Contract, Bath, N. Y., 11/12/34	8290	5800
R5	Contract, Canandaigua, N. Y., 11/12/34	8291	5801
R6	Contract, Carthage, N. Y., 11/12/34	8292	5802
R7	Contract, Corning, N. Y., 11/12/34	8293	5803
R8	Contract, Cortland, N. Y., 11/12/34	8294	5804
R9	Contract, Geneva, N. Y., 11/12/34	8295	5805
R10	Contract, Glens Falls, N. Y., 11/12/34	8296	5806
R11	Contract, Gloversville, N. Y., 11/12/34	8297	5807
R12	Contract, Hamilton, N. Y., 3/29/35	8298	5808
R13	Contract, Herkimer, N. Y., 11/12/34	8299	5809
R14	Contract, Little Falls, N. Y., 11/12/34	8300	5810
R15	Contract, Lockport, N. Y., 11/12/34, (first run)	8301	5811
R16	Contract, Lockport, N. Y., 11/12/34, (second run)	8302	5812
R17	Contract, RKO-Schine, 1934-35, Malone, Malone, N. Y.	8303	5813
R18	Contract, Massena, N. Y., 11/12/34	8304	5814
R21	Contract, Ogdensburg, N. Y., 11/12/34	8305	5815
R22	Contract, Oneonta, N. Y., 11/14/34	8306	5816
R23	Contract, Oswego, N. Y., 11/12/34	8307	5817

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
R24	Contract, Rochester, N. Y., 11/12/34, (repeat run)	8308	5818
R25	Contract, Rochester, N. Y., 11/12/34, (third run)	8309	5819
R26	Contract, Rochester, N. Y., 11/12/34, (repeat run)	8310	5820
R27	Contract, Rochester, N. Y., 11/12/34, (Subsequent run)	8311	5821
R28	Contract, Salamanca, N. Y., 11/12/34	8312	5822
R29	Contract, Saranac Lake, N. Y., 11/12/34	8313	5823
R30	Contract, Tupper Lake, N. Y., 5/22/35	8314	5824
R31	Contract, Watertown, N. Y., 11/14/34	8315	5825
R32	Contract, Bellefontaine, Ohio, 12/19/34	8316	5826
R33	Contract, Piqua, Ohio, 12/19/34	8317	5827
R34	Contract, Wooster, Ohio, 12/19/34	8318	5828
P168	First run contract, Ballston, N. Y., 9/27/40	8319	5829
P169	First run contract, Carthage, N. Y., 9/27/40	8320	5830
P170	First run contract, Hamilton, N. Y., 9/27/40	8321	5831
P171	First run contract, Saranac Lake, N. Y., 9/27/40	8322	5832
P172	First run contract, Whitehall, N. Y., 9/27/40	8323	5833
P173	First run contract, Salamanca, N. Y., 9/27/40	8324	5834
P174	First run contract, Bath, N. Y., 9/27/40	8325	5835
P175	First run contract, Canandaigua, N. Y., 9/27/40	8326	5836
P176	First run contract, Perry, N. Y., 9/27/40	8327	5837
P177	First run contract, Oswego, N. Y., 9/27/40	8328	5838
P178	Second run contract, Oswego, N. Y., 9/27/40	8329	5839
P179	First run contract, Hurlock, Md., 9/27/40	8330	5840
P180	First run contract, Easton, Md., 9/27/40	8331	5841
P181	First run contract, Cambridge, Md., 9/27/40	8332	5842
P182	First run contract, Richmond, Ky., 9/30/40	8333	5843
P183	First run contract, Paris, Ky., 9/30/40	8334	5844
P184	First run contract, Middlesboro, Ky., 9/30/40	8335	5845
P185	First run contract, Lexington, Ky., 9/30/40	8336	5846
P186	Second run contract, Lexington, Ky., 9/30/40	8337	5847
P187	Third run contract, Lexington, Ky., 9/30/40	8338	5848
P188	First run contract, Milford, Del., 9/27/40	8339	5849
P189	Run blank contract, Laurel, Del., 9/27/40	8340	5850
P190	First run contract, Delaware, Ohio, 9/30/40	8341	5851
P192	First run contract, Harlan, Ky., 9/30/40	8342	5852
P193	First run contract, Maysville, Ky., 9/30/40	8343	5853
P194	First ruh contract, Pikeville, Ky., 9/30/40	8344	5854
P195	Contract, Cumberland, Md., 1/17/41	8345	5855
P196	First run contract, Salisbury, Md., 1/17/41	8346	5856
P197	First run contract, Amsterdam, N. Y., 9/27/40	8347	5857
P198	First run contract, Auburn, N. Y., 9/27/40	8348	5858
P199	Second run contract, Auburn, N. Y., 9/27/40	8349	5859
P200	First run contract, Corning, N. Y., 9/27/40	8350	5860
P201	Second run contract, Corning, N. Y., 9/27/40	8351	5861
P202	First run contract, Cortland, N. Y., 9/27/40	8352	5862
P203	First run contract, Geneva, N. Y., 9/27/40	8353	5863

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
P204	Second run contract, Geneva, N. Y., 9/27/40	8354	5864
P205	First run contract, Glens Falls, N. Y., 9/27/40	8355	5865
P206	First run contract, Gloversville, N. Y., 9/27/40	8356	5866
P207	First run contract, Herkimer, N. Y., 9/27/40	8357	5867
P208	First run contract, Hudson Falls, N. Y., 9/27/40	8358	5868
P209	First run contract, Ilion, N. Y., 9/27/40	8359	5869
P210	First run contract, Little Falls, N. Y., 9/27/40	8360	5870
P211	First run contract, Lockport, N. Y., 9/27/40	8361	5871
P212	Second run contract, Lockport, N. Y., 9/27/40	8362	5872
P213	First run contract, Malone, N. Y., 9/27/40	8363	5873
P214	First run contract, Massena, N. Y., 9/27/40	8364	5874
P215	First run contract, Newark, N. Y., 9/27/40	8365	5875
P216	First run contract, Norwich, N. Y., 9/27/40	8366	5876
P217	First run contract, Ogdensburg, N. Y., 9/27/40	8367	5877
P218	First run contract, Oneonta, N. Y., 9/27/40	8368	5878
P219	First run contract, Penn Yan, N. Y., 9/27/40	8369	5879
P220	First run contract, Seneca Falls, N. Y., 9/27/40	8370	5880
P221	First run contract, Tupper Lake, N. Y., 9/27/40	8371	5881
P222	First run contract, Watertown, N. Y., 9/27/40	8372	5882
P223	Second run contract, Watertown, N. Y., 9/27/40	8373	5883
P224	First run contract, Ashland, Ohio, 9/30/40	8374	5884
P225	First run contract, Athens, Ohio, 9/30/40	8375	5885
P226	First run contract, Bellefontaine, Ohio, 9/30/40	8376	5886
P227	First run contract, Bucyrus, Ohio, 9/30/40	8377	5887
P228	First run contract, Fostoria, Ohio, 9/30/40	8378	5888
P229	First run contract, Kent or Ravenna, Ohio 9/30/40	8379	5889
P230	Repeat run contract, Kent or Ravenna, Ohio, 9/30/40	8380	5890
P231	First run contract, Medina, Ohio, 9/30/40	8381	5891
P232	First run contract, Mount Vernon, Ohio, 9/30/40	8382	5892
P234	First run contract, Norwalk, Ohio, 9/30/40	8383	5893
P235	First run contract, Shelby, Ohio, 9/30/40	8384	5894
P236	First run contract, Tiffin, Ohio, 9/30/40	8385	5895
P237	First run contract, Van Wert, Ohio, 9/30/40	8386	5896
P238	First run contract, Wooster, Ohio, 9/30/40	8387	5897
PP1	Contract, Paramount and Schine, 2/8/40 9/30/40, 1939–40, 1940–41, Piqua, Ohio, first run	8388	5898
PP2	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Cameo, subsequent run	8389	5899
PP3	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Grand subsequent run	8390	5900
PP4	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Liberty, repeat run	8391	5901

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
PP5	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Riviera or Liberty, third run	8392	5902
PP6	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Monroe, After Riviera, etc.	8393	5903
PP7	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., Madison, After Riviera, etc.	8394	5904
PP8	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., State, Repeat run	8395	5905
PP9	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., State, Dixie, third run	8396	5906
PP10	Contract, Paramount and Schine, 2/8/40, 9/27/40, 1939–40, 1940–41, Rochester, N. Y., West End Open with Arnett	8397	5907
F2	Contract, Fox and Schine, 6/17/36, Amsterdam, N. Y., 1936–37—1st	8398	5908
F3	Contract, Fox and Schine, Amsterdam, N. Y., 6/17/36, 1936–37, 2nd run	8399	5909
F4	Contract, Fox and Schine, 8/5/36, 1936–37, Auburn, N. Y., 1st run	8400	5910
F5	Contract, Fox and Schine, 8/5/36, 1936–37, Bath, N. Y., 1st run	8401	5911
F6	Contract, Fox and Schine, 8/5/36, 1936–37, Canandaigua, N. Y., 1st run	8402	5912
F7	Contract, Fox and Schine, 8/5/36, 1936–37, Carthage, N. Y., 1st run	8403	5913
F8	Contract, Fox and Schine, 8/5/36, 1936–37, Corning, N. Y., 1st run	8404	5914
F9	Contract, Fox and Schine, 8/5/36, 1936–37, Corning, N. Y., 2nd run	8405	5915
F10	Contract, Fox and Schine, 8/5/36, 1936–37, Cortland, N. Y., 1st run	8406	5916
F11	Contract, Fox and Schine, 8/5/36, 1936–37, Geneva, N. Y., 1st run	8407	5917
F12	Contract, Fox and Schine, 6/17/36, 1936–37, Glens Falls, N. Y., 1st run	8408	5918
F13	Contract, Fox and Schine, 6/17/36, 1936–37, Glens Falls, N. Y., 2nd run	8409	5919
F14	Contract, Fox and Schine, 6/17/36, 1936–37, Gloversville, N. Y., 1st run	8410	5920
F15	Contract, Fox and Schine, 6/17/36, 1936–37, Gloversville, N. Y., 2nd run	8411	5921
F16	Contract, Fox and Schine, 6/17/36, 1936–37, Hamilton, N. Y., 1st run	8412	5922
F17	Contract, Fox and Schine, 6/17/36, 1936–37, Herkimer, N. Y., 1st run	8413	5923

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F18	Contract, Fox and Schine, 6/17/36, 1936–37, Hudson Falls, N. Y., 1st run	8414	5924
F19	Contract, Fox and Schine, 6/17/36, 1936–37, Little Falls, N. Y., 1st run	8415	5925
F20	Contract, Fox and Schine, 8/5/36, 1936–37, Lockport, N. Y., 1st run	8416	5926
F21	Contract, Fox and Schine, 8/5/36, 1936–37, Lockport, N. Y., 2nd run	8417	5927
F22	Contract, Fox and Schine, 6/17/36, 1936–37, Malone, N. Y., 1st run	8418	5928
F23	Contract, 20th Century-Schine, 8/17/36, Massena, Massena, N. Y.	8419	5929
F24	Contract, 20th Century-Schine, 8/17/36, Colonial, Norwich, N. Y.	8420	5930
F25	Contract, Fox and Schine, 6/17/36, 1936–37, Ogdensburg, N. Y., 1st run	8421	5931
F26	Contract, Fox and Schine, 6/17/36, 1936–37, Oneonta, N. Y., 1st run	8422	5932
F27	Contract, Fox and Schine, 6/17/36, 1936–37, Oneonta, N. Y., 2nd run	8423	5933
F28	Contract, Fox and Schine, 8/5/36, 1936–37, Perry, N. Y., 1st run	8424	5934
F29	Contract, Fox and Schine, 8/11/37, 1937–38, 1938–39, Perry, N. Y., 1st run	8425	5935
F30	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., State or Dixie, 2nd run	8426	5936
F31	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., State or Dixie, repeat run	8427	5937
F32	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., Lake, sub. run	8428	5938
F33	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., Grand, sub. run	8429	5939
F34	Contract, Fox and Schine, 8/5/36, 1936–37, Rochester, N. Y., Cameo, after Madison and Monroe	8430	5940
F35	Contract, Fox and Schine, 8/5/36, 1936–37, Salamanca, 1st run	8431	5941
F36	Contract, Fox and Schine, 8/5/36, 1936–37, Saranac Lake, 1st run	8432	5942
F37	Contract, Fox and Schine, 8/5/36, 1936–37, Seneca Falls, N. Y., 1st run	8433	5943
F38	Contract, Fox and Schine, 6/17/36, 1936–37, Tupper Lake, N. Y., 1st run	8434	5944
F39	Contract, Fox and Schine, 6/17/36, 1936–37, Watertown, N. Y., 1st run	8435	5945
F40	Contract, Fox and Schine, 10/28/36, 1936–37, Watertown, N. Y., third run	8436	5946
F41	Contract, Fox and Schine, 9/5/36, 1936–37, Ashland, Ohio, 1st run	8437	5947

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F42	Contract, Fox and Schine, 1936-37; Athens, N. Y., 1st run	8438	5948
F43	Contract, Fox and Schine, 8/5/36, 1936-37, Bellefontaine, O., 1st run	8439	5949
F44	Contract, Fox and Schine, 8/5/36, 1936-37, Bucyrus, O., 1st run	8440	5950
F45	Contract, Fox and Schine, 8/5/36, 1936-37, Delaware, O., 1st run	8441	5951
F46	Contract, Fox and Schine, 8/5/36, 1936-37, Mt. Vernon, O., 1st run	8442	5952
F47	Contract, Fox and Schine, 9/5/36, 1936-37, Norwalk, O., 1st run	8443	5953
F48	Contract, Fox and Schine, 6/17/36, 1936-37, Piqua, O., 1st run	8444	5954
F49	Contract, Fox and Schine, 10/20/37, 1937-38, Lexington, Ky., 2nd run	8445	5955
F50	Contract, Fox and Schine, 12/15/36, 1936-37, Lexington, Ky., 1st run	8446	5956
F51	Contract, Fox and Schine, 12/15/36, 1936-37, Richmond, Ky., 1st run	8447	5957
F52	Contract, Fox and Schine, 4/27/37, 1937-38, Ilion, N. Y., 1st run	8448	5958
F53	Contract, Fox and Schine, 4/27/37, 1938-39, Ilion, N. Y., 1st run	8449	5959
F54	Contract, Fox and Schine, 12/22/37, 1937-38, Kent or Ravenna, 1st run	8450	5960
F55	Contract, Fox and Schine, 12/22/37, 1937-38, Kent or Ravenna, repeat run	8451	5961
F56	Contract, Fox and Schine, 6/14/38, 1937-38, Tiffin, O., 2nd run	8452	5962
F57	Contract, Fox and Schine, 8/5/36, 1936-37, Tiffin, O., 1st run	8453	5963
F59	Contract, Fox and Schine, 8/5/36, 1936-37, Oswego, N. Y., 1st run	8454	5964
F60	Contract, Fox and Schine, 8/5/36, 1936-37, Oswego, N. Y., 2nd run	8455	5965
F61	Contract, Fox and Schine, 8/5/35, 1936-37, Penn Yan, N. Y., 1st run	8456	5966
F62	Contract, Fox and Schine, 8/11/37, 1937-38, and 1938-39, Penn Yan, N. Y., 1st run	8457	5967
F63	Contract, Fox and Schine, 8/5/36, 1936-67, Van Wert, Ohio, 1st run	8458	5968
F64	Contract, Fox and Schine, 8/5/36, 1936-37, Wooster, O., 1st run	8459	5969
F87	Contract, Fox-Schine, 6/20/34, State or Dixie, Rochester, N. Y.	8460	5970
F101(1-40)	Contracts, Fox and Schine, 8/5/35, 1935-36, (80)	8461	5971
F101(42,43)	Contracts (4), Fox and Schine, 8/5/35, 1935-36 (Fox and 20th Century)	8537	6047

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F117	Contract, Fox and Schine, 12/2/38, 1938-39, Pikeville, Ky., 1st run	8541	6051
F118	Contract, Fox and Schine, 12/3/38, 1938-39, Paris, Ky., second run	8542	6052
F119	Contract, Fox and Schine, 12/2/38, 1938-39, Middlesboro, Ky., 1st run	8543	6053
F120	Contract, Fox and Schine, 12/15/38, 1938-39, Granville, N. Y., 1st run	8544	6054
F121	Contract, Fox and Schine, 12/2/38, 1938-39, Harlan, Ky	8545	6055
F122	Contracts, Fox and Schine, 12/16/39, 1938/39, 1939/40, 7/24/39, 1940/41, 41/42, Lexington, Ky	8546	6056
F125	Contract, first run, Maysville, Ky., 1/23/39	8547	6057
F126	Contract, first run, Maysville, Ky., 6/6/39	8548	6058
F127	Contract, first run, Milford, Del., 8/10/39	8549	6059
F128	Contract, first run, Lexington, Ky., 6/6/39	8550	6060
F129	Contract, second run, Lexington, Ky., 6/6/39	8551	6061
F130	Contract, first run, Middlesboro, Ky., 6/6/39	8552	6062
F131	Contract, first run, Paris, Ky., 6/6/39	8553	6063
F132	Contract, first season, Richmond, Ky., 6/6/39	8554	6064
F133	Contract, first run, Cambridge, Md., 8/10/39	8555	6065
F134	Contract, first run, Easton, Md., 8/10/39	8556	6066
F135	Contract, first run, Federalsburg, Md., 8/10/39	8557	6067
F136	Contract, first run, Amsterdam, N. Y., 6/9/39	8558	6068
F137	Contract, second run, Amsterdam, N. Y., 6/9/39	8559	6069
F138	Contract, first run, Auburn, N. Y., 6/7/39	8560	6070
F139	Contract, first run, Bath, N. Y., 6/7/39	8561	6071
F140	Contract, first run, Canandaigua, N. Y., 6/7/39	8562	6072
F141	Contract, first run, Corning, N. Y., 6/7/39	8563	6073
F142	Contract, second run, Corning, N. Y., 6/7/39	8564	6074
F143	Contract, first run, Cortland, N. Y., 6/7/39	8565	6075
F144	Contract, first run, East Rochester or Fairport, N. Y., 2/29/40	8566	6076
F145	Contract, second run, East Rochester or Fairport, N. Y., 2/29/40	8567	6077
F146	Contract, first run, Geneva, N. Y., 6/7/39	8568	6078
F147	Contract, second run, Glens Falls, N. Y., 6/9/39	8569	6079
F148	Contract, first run, Glens Falls, N. Y., 10/8/40	8570	6080
F149	Contract, first run, Gloversville, N. Y., 6/9/39	8571	6081
F150	Contract, second run, Gloversville, N. Y., 6/9/39	8572	6082
F151	Contract, first run, Granville, N. Y., 6/9/39	8573	6083
F152	Contract, first run, Hamilton, N. Y., 6/9/39	8574	6084
F153	Contract, first run, Herkimer, N. Y., 6/9/39	8575	6085
F154	Contract, first run, Hudson Falls, N. Y., 6/9/39	8576	6086
F155	Contract, first run, Ilion, N. Y., 6/9/39	8577	6087

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F156	Contract, first run, Little Falls, N. Y., 6/9/39	8578	6088
F157	Contract, first run, Glens Falls, N. Y., 6/9/39	8579	6089
F158	Contract, first run, Pikesville, Ky., 6/6/39	8580	6090
F159	Contract, first run, Carthage, N. Y., 6/6/39	8581	6091
F160	Contract, first run, Lockport, N. Y., 6/7/39	8582	6092
F161	Contract, second run, Lockport, N. Y., 6/7/39	8583	6093
F162	Contract, first run, Malone, N. Y., 6/9/39	8584	6094
F163	Contract, first run, Massena, N. Y., 6/9/39	8585	6095
F164	Contract, first run, Norwich, N. Y., 6/9/39	8586	6096
F165	Contract, first run, Ogdensburg, N. Y., 6/9/39	8587	6097
F166	Contract, first run, Oneonta, N. Y., 6/9/39	8588	6098
F167	Contract, second run, Oneonta, N. Y., 6/9/39	8589	6099
F168	Contract, first run, Perry, N. Y., 6/9/39	8590	6100
F169	Contract, subsequent run, Rochester, N. Y., 2/29/40	8591	6101
F170	Contract, subsequent run, Rochester, N. Y., 2/29/40	8592	6102
F171	Contract, subsequent run, Rochester, N. Y., 2/29/40	8593	6103
F172	Contract, subsequent run, Rochester, N. Y., 12/14/39	8594	6104
F173	Contract, second run, Rochester, N. Y., 2/29/40	8595	6105
F174	Contract, repeat run, Rochester, N. Y., 2/29/40	8596	6106
F175	Contract, subsequent run, Rochester, N. Y., 12/14/39	8597	6107
F176	Contract, first run, Salamanca, N. Y., 6/7/39	8598	6108
F177	Contract, first run, Saranac Lake, N. Y., 6/9/39	8599	6109
F178	Contract, first run, Seneca Falls, N. Y., 6/9/39	8600	6110
F179	Contract, subsequent run, Syracuse, N. Y., 9/1/39	8601	6111
F180	Contract, first run, Tupper Lake, N. Y., 6/9/39	8602	6112
F181	Contract, first run, Watertown, N. Y., 6/9/39	8603	6113
F182	Contract, second run, Watertown, N. Y., 6/9/39	8604	6114
F183	Contract, Seven (7) days after first run, Ashland, Ohio	8605	6115
F184	Contract, first run, Athens, O., 6/6/39	8606	6116
F185	Contract, first run, Bellefontaine, O., 6/8/39	8607	6117
F186	Contract, first run, Bucyrus, O., 6/8/39	8608	6118
F187	Contract, first run, Delaware, O., 6/8/39	8609	6119
F188	Contract, first run, Fostoria, O., 6/8/39	8610	6120
F189	Contract, first run, Kent or Ravenna, O., 6/8/39	8611	6121
F190	Contract, second run, Kent or Ravenna, O., 6/8/39	8612	6122
F191	Contract, first run, Medina, O., 10/10/39	8613	6123
F192	Contract, first run, Mount Vernon, O., 6/8/39	8614	6124
F194	Contract, first run, Norwalk, O., 6/8/39	8615	6125
P195	Contract, first run, Piqua, O., 6/6/39	8616	6126
P196	Contract, first run, Shelby, O., 6/8/39	8617	6127
F197	Contract, first run, Tiffin, O., 6/8/39	8618	6128

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
F198	Contract, first run, Van Wert, O., 6/8/39	8619	6129
F199	Contract, first run, Wooster, O., 6/8/39	8620	6130
F200	Contract, first run, Cumberland, Md., 3/24/41	8621	6131
F201	Contract, first run, Ballston, N. Y., 9/17/40	8622	6132
F202	Contract, first run, Mechanicville, N. Y., 9/17/40	8623	6133
F203	Contract, first run, Whitehall, N. Y., 9/17/40	8624	6134
F204	Contract, subsequent run, Rochester, N. Y., 12/14/39	8625	6135
F205	Contract, first run, Newark, N. Y., 6/7/39	8625	6136
F206	Contract, first run, Oswego, N. Y., 6/7/39	8627	6137
F207	Contract, second run, Oswego, N. Y., 6/7/39	8628	6138
F208	Contract, first run, Penn Yan, N. Y., 6/7/39	8629	6139
F209	Contract, first run, Harlan, Ky., 6/6/39	8630	6140
F210	Contract, first run, Hurlock, Md., 1/6/41	8631	6141
F211	Contract, first run, Hurlock, Md., 11/30/39	8632	6142
F212	Contract, first run, Saint Michaels, Md., 1/6/41	8633	6143
D213	Contract, first run, Saint Michaels, Md., 11/30/39	8634	6144
F214	Contract, first run, Laurel, Del., 6/22/39	8635	6145
D42	Contract, RKO and Kemper, 3/23/39, 1938–39	8636	6146
D47	Contract, Columbia and Reliance, Palace	8637	6147
D48	Contract, Columbia and Reliance, Palace	8638	6148
D49	Contract, Columbia and Reliance, Palace	8639	6149
D69	Contract, 1/27/34, U.A. & Reliance, Arrowsmith, 1st run	8640	6150
D70	Contract, 1/27/34, U.A. & Reliance, Scarface, 1st run	8642	6152
D71	Contract, U.A. & Reliance, Tonight or Never, 1st run, 1/27/34	8643	6153
D72	Contract, U.A. & Reliance, Cock of the Air, 1st run, 1/27/34	8644	6154
D73	Contract, U.A. & Reliance, Bitter Sweet, 1st run, 1/27/34	8646	6156
D74	Contract, U.A. & Reliance, Unholy Garden, 1st run, 1/27/34	8647	6157
D75	Contract, U.A. & Reliance, Secrets, 1st run, 2/16/34	8649	6159
D76	Contract, U.A. & Reliance, Emperor Jones, 1st run, 2/16/34	8650	6160
D77	Contract, U.A. & Reliance, Private Life Henry 8th, 1st run, 2/10/34	8651	6161
D78	Contract, U. A. & Reliance, Catherine The Great, 1st run, 5/7/34	8652	6162
D79	Contract, U. A. & Reliance, Greeks Had A Word, 1st run, 2/26/34	8653	6163
D80	Contract, U. A. & Reliance, Sorrell and Son, 1st run, 6/9/34	8655	6165
D81	Contract, U. A. & Reliance, Born To Be Bad, 1st run, 7/28/34	8656	6166

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
D82	Contract, Mundus Distributing Company, 12/15/34	8658	6168
D83	Contract, Mundus Distributing Company, 3/20/35	8659	6169
D84	Contract, U. A. & Reliance, Congo Raid, 4/22/35	8660	6170
D85	Contract, U. A. & Reliance, Private Life Don Juan, 1st run, 4/22/35	8661	6171
D86	Contract, U. A. & Reliance, Runaway Queen, 1st run, 4/22/35	8662	6172
D87	Contract, U. A. & Reliance, Our Daily Bread, 1st run, 4/22/35	8663	6173
D88	Contract, U. A. & Reliance, Transatlantic Merry Go Round, 1st run, 4/ /35	8664	6174
D89	Contract, U. A. & Reliance, Clive of India, 1st run, 4/22/35	8665	6175
D90	Contract, U. A. & Reliance, Folies Bergere, 1st run, 4/22/35	8666	6176
D91	Contract, U. A. & Reliance, Bulldog Drummond, 1st run, 4/22/35	8667	6177
D92	Contract, U. A. & Reliance, Cellini, 1st run, 4/22/35	8668	6178
D93	Contract, U. A. & Reliance, Brewsters Millions, 1st run, 5/14/35	8669	6179
D94	Contract, U. A. & Reliance, Cardinal Richelieu, 1st run, 5/14/35	8670	6180
D95	Contract, U. A. & Reliance, Les Miserables, 1st run, 5/14/35	8671	6181
D96	Contract, U. A. & Reliance, Scarlet Pimpernel, 1st run, 4/22/35	8672	6182
D97	Contract, U. A. & Reliance, Thunder in The East, 1st run, 5/11/35	8673	6183
D98	Contract, U. A. & Reliance, Rain, 1st run, 4/5/34	8674	6184
D99	Contract, U. A. & Reliance, Let Have It, 1st run, 5/11/35	8675	6185
D100	Contract, U. A. & Reliance, Escape Me Never, 1st run, 10/23/35	8676	6186
D101	Contract, U. A. & Reliance, Nell Gwyn, 1st run, 10/23/35	8677	6187
D102	Contract, U. A. & Reliance, Amateur Lady, 1st run, 5/11/35	8678	6188
D103	Contract, U. A. & Reliance, Red Salute, 1st run, 12/27/35	8679	6189
D104	Contract, U. A. & Reliance, Melody Lingers On, 1st run, 5/11/35	8680	6190
D105	Contract, U. A. & Reliance, 2 Kordas, 1st run, 9/21/36	8681	6191
D106	Contract, U. A. & Reliance, Amateur Gentlemen, 1st run, 9/28/36	8682	6192

DIGESTS OF LICENSE CONTRACT EXHIBITS—Continued

		Original	Print
D107	Contract, U. A. & Reliance, Street Scene, 1st run, 4/5/34	8683	6193
D110	Contract, Paramount and Reliance, 3 features, 1st run, 7/27/34	8684	6194
D111	Contract, Paramount and Reliance, 5 features, 4/23/34	8685	6195
D117	Contract, RKO & Wallace, 10/7/41	8686	6196
D118	Contract, RKO & Wallace, 10/7/41	8687	6197
D123	Contract, Columbia and Wallace, 1934–35, Capitol, Auburn	8688	6198
D124	Contract, Columbia and Wallace, 1935–36, Capitol, Auburn	8689	6199
D125	Contract, Columbia and Wallace, 1937–38, Capitol	8690	6200
D126	Contract, Columbia and Wallace, 1938–39, Capitol	8691	6201
D127	Contract, Columbia and Wallace, 1939–40, Capitol	8692	6202
D128	Contract, Columbia and Wallace, 1936–37, Capitol	8693	6203
D129	Contracts (2), Columbia and Wallace, 1940/41, 41/42, Capitol	8694	6204
D140	Contract, RKO and Smalley, 9/7/37, 1937–38, features for Norwich	8698	6208
D141	Contract, Columbia and Smalley, 8/12/35	8699	6209
D142	Contract, Columbia and Smalley, 5/6/37	8700	6210
D147	Contract, Columbia and Smalley, 12/20/40	8701	6211
D148A	Contract, Warner and State-Bucyrus, 7/13/35	8702	6212
D148D	Contract, Warners—First National and State—Bucyrus, 9/5/35	8703	6213

[fol. 1]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., SCHINE CIRCUIT, INC., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Chain Theatres of Ohio, Inc., Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Meyer Schine, Louis W. Schine, John A. May, Loew's Incorporated, Radio-Keith-Orpheum Corporation, Universal Pictures Company, Inc., Universal Film Exchanges, Inc., Twentieth Century-Fox Film Corporation, United Artists Corporation, Columbia Pictures Corporation, Warner Bros. Pictures, Inc., Vitagraph, Inc., Paramount Pictures, Inc., and Paramount Film Distributing Corporation, Defendants

COMPLAINT

To the Honorable, the Judges of the District Court of the United States for the Western District of New York.

I. JURISDICTION AND VENUE

1

The United States of America, by George L. Grobe, United States Attorney for the Western District of New [fol. 2] York, acting under the direction of the Attorney General, brings this proceeding under Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said Act being commonly known as the Sherman Anti-Trust Act, against the above named defendants in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.

2

The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts to monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce among the several States of the United States and with foreign countries, have been and are conceived, carried out and made effective, in part, within the Western District of New York, and many of the unlawful acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives, within said District. The interstate trade and commerce involved in the motion picture industry, as hereinafter described, is carried on, in part, within the said District.

II. Description of Defendants

3

Schine Chain Theatres, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

4

Schine Circuit, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

[fol. 3] 5

Schine Theatrical Co., Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

6

Schine Enterprises Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 1250 Sixth Avenue, New York, New York.

7

Schine Chain Theatres of Ohio, Inc., is a corporation organized and existing under the laws of the State of Delaware with David M. Donley, Union Commerce Building, Cleveland, Ohio, as agent.

8

Schine Lexington Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

9

Chesapeake Theatres Corporation is a corporation organized and existing under the laws of the State of Maryland and has its principal place of business in Gloversville, New York.

10

J. Meyer Schine is a resident of Gloversville, New York.

11

Louis W. Schine is a resident of Gloversville, New York.

[fol. 4]

12

John A. May is a resident of Gloversville, New York.

13

The defendants named and described above in paragraph 3 to 12, inclusive, are sometimes hereinafter collectively referred to as the "Schine defendants."

14

Loew's Incorporated, hereinafter referred to as Loew's is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 1540 Broadway, in the City of New York, New York.

15

Radio-Keith-Orpheum Corporation, hereinafter referred to as RKO, is a corporation organized and existing under the laws of the State of Maryland, and has its principal place of business at 1270 Sixth Avenue, in the City of New York, New York.

16

(a) Universal Pictures Company, Inc., hereinafter referred to as Universal, is a corporation organized and existing under the laws of the State of Delaware, and has its

principal place of business at 1250 Sixth Avenue, in the City of New York, New York.

(b) Universal Film Exchanges, Inc., hereinafter referred to as Universal Film, a subsidiary of Universal, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1250 Sixth Avenue, in the City of New York, New York.

[fol. 5]

17

Twentieth Century-Fox Film Corporation, hereinafter referred to as Fox, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 444 West 56th Street, in the City of New York, New York.

18

United Artists Corporation, hereinafter referred to as United Artists, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 729 Seventh Avenue, in the City of New York, New York.

19

Columbia Pictures Corporation, hereinafter referred to as Columbia, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 729 Seventh Avenue, in the City of New York, New York.

20

(a) Warner Bros. Pictures, Inc., hereinafter referred to as Warner Bros., is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

(b) Vitagraph, Inc., hereinafter referred to as Vitagraph, a wholly owned subsidiary of Warner Bros., is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

[fol. 6]

21

(a) Paramount Pictures, Inc., hereinafter referred to as Paramount, is a corporation organized and existing under

the laws of the State of New York, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

(b) Paramount Film Distributing Corporation, hereinafter referred to as Paramount Film, a wholly owned subsidiary of Paramount, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

22

The defendants named and described above in paragraphs 14 to 21, inclusive, are sometimes hereinafter collectively referred to as the "distributor defendants."

23

The Schine defendants are engaged in the business of exhibiting motion pictures in the States of New York, Ohio, Kentucky, Delaware, and Maryland, the Dominion of Canada, and other localities unknown to plaintiff, and operate and control what is commonly referred to in the motion-picture industry as a circuit of theatres. The corporate Schine defendants, directly or through subsidiaries or affiliates, and the individual Schine defendants, individually or through corporations and companies controlled by them, own, operate, or control approximately 165 theatres in the following cities and towns, and in other cities and towns unknown to plaintiff. *State of New York:* Amsterdam, Ballston Spa, Carthage, Glens Falls, Gloversville, Hamilton, Herkimer, Hudson Falls, Ilion, Little Falls, Malone, [fol. 7] Massina, Mechanicville, Norwich, Ogdensburg, Oneonta, Saranac Lake, Tupper Lake, Watertown, Whitehall, Auburn, Avon, Bath, Buffalo, Canandaigua, Corning, Cortland, Geneva, Lockport, Newark, Oswego, Penn Yan, Perry, Rochester, Salamanca, Seneca Falls, and Syracuse; *State of Ohio:* Ashland, Athens, Bellefontaine, Bucyrus, Delaware, Fostoria, Kent, Medina, Mt. Vernon, Norwalk, Piqua, Ravenna, Shelby, Tiffin, Van Wert, and Wooster; *State of Kentucky:* Harlan, Lexington, Maysville, Pikesville, Richmond, Paris, and Corbin; *State of Delaware:* Laurel and Milford; *State of Maryland:* Cambridge, Easton, Hurlock, Federalsburg, and Salisbury. The aforesaid towns and cities in which the Schine defendants operate theatres are

hereinafter collectively referred to as the Schine towns. There is a relationship between the various corporate Schine defendants; however, the precise function performed by each other corporate Schine defendant and the relationship between it and the other corporate Schine defendants and between it and the individual Schine defendants is unknown to plaintiff. The numerous corporations which form a part of the Schine organization and which are subsidiary to or affiliated with the corporate Schine defendants are also unknown to plaintiff.

24

The defendant J. Myer Schine is President and a Director of the defendant Schine Chain Theatres, Inc.; the defendant Louis W. Schine is Secretary-Treasurer and a Director of the defendant Schine Chain Theatres, Inc.; and the defendant John A. May is Comptroller and a Director of the defendant Schine Chain Theatres, Inc. The said individual defendants own substantial interests in and control and are in active charge of the management, direction, and operation of the corporate Schine defendants, their affiliates and subsidiaries.

[fol. 8]

25

The defendants, Loew's, RKO, Universal, Universal Film, Fox, United Artists, Columbia, Warner Bros., Vitagraph, Paramount and Paramount Film are engaged, either directly or through subsidiary or associated companies, in the business of distributing motion-picture films in interstate commerce throughout the United States and Canada, including the States of New York, Ohio, Maryland, Delaware and Kentucky. All of the distributor defendants maintain branch offices, called film exchanges, in Albany and Buffalo, New York, Philadelphia, Pennsylvania, Washington, District of Columbia, and Cleveland and Cincinnati, Ohio, from which they distribute film to exhibitors in New York, Ohio, Maryland, Delaware, and Kentucky, with the exception of United Artists, which maintains no exchange at Albany, New York. The motion-picture films distributed by the distributor defendants are produced in the studios of motion-picture producers located chiefly in the State of California. The films are transported by the distributor defendants into the States of New York, Ohio, Maryland, Delaware, and Kentucky for exhibition in the various towns and

cities of said states; and after the pictures are exhibited in accordance with contractual requirements, the theatre operators return said motion-picture films to the distributor defendants for further circulation and transportation in interstate commerce.

III. Definition of Terms

26

Exhibitor—The term "exhibitor" includes, without limitation, all persons, partnerships, associations, and corporations engaged in the ownership or operation of theatres for the exhibition of motion pictures.

[fol. 9] 27

Distributor—A distributor is a person, firm, or corporation engaged in the business of licensing the exhibition of motion pictures and distributing the positive prints of these motion pictures to the exhibitors whom it licenses to exhibit them. Although the prints are usually licensed to the exhibitor, the arrangement is frequently referred to in the industry as a sale.

28

Exchange—An exchange is an office maintained by a distributor for the purpose of soliciting contracts for the exhibition of its pictures in theatres situated throughout the territory surrounding the exchange, and for the physical distribution of such films throughout this territory. An exchange usually has facilities for the receipt, storage and subsequent shipment to exhibitors of films and advertising matter concerning them.

29

Motion-picture season—The motion-picture season is generally spoken of as covering the period from September 1 of one year to August 31 of the next.

30

Feature picture—A feature picture is any motion picture, the length of the film of which is approximately five thousand feet or more (approximately five reels) and the running time for the exhibition of which is generally sixty minutes or more.

31

Short subject—A short subject is a motion picture generally consisting of one or two reels (of approximately one [fol. 10] thousand feet per reel), the running time for the exhibition of which is generally eight minutes for a one reel subject to twenty minutes for a two reel subject.

32

First run—A first run is the initial exhibition of a motion picture in any zone, and is the run which normally grosses larger box-office returns than any other run in the zone. The term has great latitude of meaning, because of indefiniteness of determination of the confines of the zone with reference to which the term may be used in particular instances:

33

Second run—A second run is the exhibition of a motion picture in any zone next subsequent to its first-run showing therein.

34

Subsequent run—A subsequent run is any exhibition of a motion picture in a zone subsequent to its first-run showing therein. Such run may be a second-run, third-run, fourth-run, and so on.

35

First-run theatre—A first-run theatre is a motion picture theatre which customarily exhibits feature pictures on first run.

36

Second-run theatre—A second-run theatre is a motion picture theatre which customarily exhib-ts feature pictures on second run.

[fol. 11]

37

Subsequent-run theatre—A subsequent-run theatre is a motion picture theatre which customarily exhibits feature pictures on subsequent run.

38

Single and double feature programs—A single feature program is ordinarily composed of the exhibition of a single film of feature length accompanied by other entertainment,

either in the form of short subjects and news reels or, sometimes, vaudeville. A double feature program is one composed of the exhibition of two feature length films on one program for a single admission price.

39

First-class picture—A first-class picture is a feature picture which, by reason of either its large cost of production, cast of well-known players, direction, story, advertising exploitation, musical score, or photography, or any combination of those factors, is likely to have strong box office appeal.

40

Protection—Protection is an agreement by a distributor, in licensing the exhibition of a film in a theatre, that it will not permit the exhibition of that film within a specified contiguous area for a specified period of time after the last exhibition thereof in said theatre. The area of protection is designated as the "zone," and the period of time as the "clearance."

41

Closed town—A closed town is a town in which one exhibitor controls and operates all the theatres.

[fol. 12] IV. THE POSITION OF THE DISTRIBUTOR DEFENDANTS IN THE INDUSTRY

42

The distributor defendants have collectively distributed during each of the past ten years approximately ninety percent of the first-class feature pictures distributed throughout the United States, including the states in which the Schine defendants operate theatres.

43

The distributor defendants have collectively distributed during each of the past ten years approximately seventy-five percent of all feature pictures distributed throughout the United States, including the states in which the Schine defendants operate theatres.

44

The feature pictures distributed by other distributors who are not defendants herein and who will be referred to hereinafter as independent distributors are, for the most part, of a secondary or inferior quality. They are not widely advertised, the actors in them are not well known, their cost of production is usually small, they are not generally exhibited in first-class theatres or as first-class motion pictures, and the demand by the public to witness their exhibition is comparatively small. The number of satisfactory or suitable feature pictures distributed by independent distributors is wholly inadequate to supply the reasonable needs of any first-class theatre. In order successfully to operate a first class theatre in any of the Schine towns, an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the distributor defendants each year.

[fol. 13] V. VIOLATIONS OF LAW

45

The defendants, each well knowing all the matters and things hereinbefore alleged, for at least the past ten years have violated and are now violating the provisions of the Sherman Anti-Trust Act by monopolizing, attempting to monopolize, combining and conspiring with each other to monopolize, and contracting, combining, and conspiring to restrain interstate trade and commerce in the distribution and exhibition of motion pictures, and, unless restrained and prevented by this Honorable Court, the said defendants will continue to violate the provisions of the Sherman Anti-Trust Act as aforesaid. Said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies to restrain interstate trade and commerce in the distribution and exhibition of motion pictures, together with the means and instrumentalities by which they have been brought about and accomplished, will now be described in detail.

46

The Schine defendants have combined and conspired with each other and with the distributor defendants, and the distributor defendants have combined and conspired with

each other, to restrain interstate trade and commerce in motion pictures in practically all situations where the Schine defendants, or any one or more of them, operate theatres. The Schine defendants have attempted to monopolize and have monopolized, and have combined and conspired with each other and with the distributor defendants to monopolize the first-and preferred-run exhibition of motion pictures in practically all situations where the Schine defendants, or any one or more of them operate theatres. The above monopolization, combinations and con- [fol. 14] spiracies in restraint of trade have been accomplished in the following manner and by other methods to plaintiff unknown:

(a) In practically every situation where the Schine defendants operate theatres, the distributor defendants uniformly grant them the first-and preferred-run in preference to all competing theatres and with protection over said theatres; and in practically all situations where the Schine defendants acquire a theatre, such theatre is thereafter granted priority and preference by all distributor defendants over competing theatres and with protection over said theatres.

(d) The distributor defendants have consistently refused to license motion pictures on a local competitive basis to exhibitors in any situations where the Schine defendants operate theatres. During each of the past ten years the Schine defendants have collectively contracted with each of the distributor defendants for all of the feature pictures annually required for exhibition at all of the theatres operated by the Schine defendants in the Schine towns, in advance of the production and distribution of such feature pictures and before such feature pictures or any of them, have been offered to any other exhibitor in said towns, with the purpose and effect of controlling and monopolizing the supply of feature pictures available for exhibition in said towns.

(c) The distributor defendants have uniformly granted the Schine defendants far greater privileges in their licensing contracts and in the exhibition of pictures than are normally granted other exhibitors. The distributor defendants frequently grant the Schine defendants among other benefits and advantages,

[fol. 15] substantial rejection privileges, and the right and privilege to play certain specified feature pictures without assuming any binding obligation to do so. Such rights and privileges are not, as a general rule, granted to other exhibitors.

(d) In many instances the distributor defendants have uniformly refused to sell a second or subsequent run in opposition to a theatre or theatres operated by the Schine defendants.

(e) The distributor defendants have uniformly granted the theatres operated by the Schine defendants unreasonable protection over other theatres.

(f) In many instances the distributor defendants have licensed motion pictures to the Schine defendants at rentals considerably less than those charged other exhibitors for comparable or less favorable runs.

(g) On many occasions the distributor defendants have licensed to the Schine defendants motion pictures greatly in excess of the reasonable exhibition requirements of their theatres, thus preventing other exhibitors from using said pictures at all or from getting them while they are still new.

47

Each of the distributor defendants has granted the uniform advantages to the Schine defendants and has imposed the uniform restraints upon competing exhibitors which have been set forth in subparagraphs 46(a) to 46(g), inclusive, in response to requests made by the Schine defendants and pursuant to agreements made with them and with each other, with knowledge of the uniformity of action taken by all of said distributor defendants and with knowledge of the competitive effect, as herein alleged, of such uniform action.

[fol. 16]

48

The Schine defendants own, control and operate what is commonly referred to in the motion-picture industry as a circuit of theatres. As a result of the acquisition and operation of numerous theatres, for all of which pictures are purchased by the Schine defendants, said defendants have obtained what is commonly referred to in the motion-pic-

ture industry as circuit buying power. By the pressure of the combined purchasing power of their theatres, the Schine defendants have induced the distributor defendants to grant them the uniform privileges, contracts, and exclusive rights and to impose upon competing exhibitors the uniform restrictions and restraints set forth in subparagraphs 46(a) to 46(g), inclusive, which privileges, contracts, exclusive rights, restrictions and restraints could not have been obtained by said theatres of the Schine defendants had they been operated by independent rather than chain exhibitors. In many of the Schine towns the only theatre or theatres in operation are the theatres of the Schine circuit. Such towns are referred to as closed towns. By means of this system of circuit buying, the Schine circuit is able to maintain its local monopolies in its closed towns and to combine the power of those monopolies in negotiating for product in areas where some competing theatres exist. This method of circuit buying engaged in by the Schine defendants and the correlative method of circuit selling engaged in uniformly by the distributor defendants disregards completely local competitive factors in the respective areas where the Schine circuit operates theatres and creates a condition where free enterprise and open competition are completely stifled.

49

By virtue of their circuit buying power, as described above, and their assurance of product, the Schine defend- [fol. 17] ants have been enabled, in combination with the distributor defendants, to effectuate and to maintain their monopoly of exhibition and to carry out the restraints of trade set forth herein, in the following manner:

(a) The Schine defendants have acquired and attempted to acquire theatres, and have forced and attempted to force competitors out of business for many years past, in some cases as long as eighteen or twenty years ago, by the following methods and others to plaintiff unknown:

(1) Threatening to build a theatre in opposition to another exhibitor if he does not agree to sell or lease to them.

(2) Building a theatre in opposition to another exhibitor, thereby taking away his product and relegating him to an inferior position.

(3) Threatening to deprive another exhibitor of desirable product or run if he does not agree to sell or lease to them.

(4) Depriving another exhibitor of desirable product or run, thereby relegating him to an inferior position.

(5) Announcing the proposed construction or opening of a theatre or taking an interest in a theatre site in the neighborhood of another exhibitor, with the suggestion conveyed to that exhibitor, either directly or through third parties, that the Schine defendants intend to build and open a theatre if the other exhibitor will not agree to sell or lease to them.

(6) Acquiring the superior title in a theatre controlled or operated by another exhibitor, and taking over the control or operation of such theatre.

[fol. 18] (7) Cutting admission prices in areas where competition exists.

(8) Resorting to unusual and costly games and giveaways in areas where competition exists.

(9) Taking unreasonable protection over other exhibitors.

(b) The Schine defendants have continuously for, at least, the past ten years restrained trade and monopolized the exhibition of motion pictures in the Schine towns in the following manner, and by other methods to plaintiff unknown:

(1) Monopolizing the first and preferred runs of all the high-class feature pictures distributed by the distributor defendants in practically all situations where the Schine defendants operate theatres, and also in some of their situations the most desirable feature pictures distributed by independent distributors.

(2) Contracting for more feature pictures distributed by the distributor defendants than the Schine defendants can reasonably exhibit, thus denying other exhibitors the opportunity of contracting for or exhibiting said feature pictures.

(3) Demanding and receiving unreasonable protection over other exhibitors.

(4) Demanding and receiving more favorable rental terms than other exhibitors in comparable or less favorable situations.

(5) Demanding and receiving more favorable rejection privileges than other exhibitors, and other more advantageous benefits and privileges.

[fol. 19] (6) Inducing the granting of privileges and advantages by the distributor defendants through entertainments, gifts, and favors tendered to their representatives.

(c) In order to maintain and perpetuate their monopoly and in order actively to discourage competition in the Schine towns, the Schine defendants have engaged in the following practices, and in others to plaintiff unknown:

(1) Keeping theatres closed in many of their towns, and opening them or announcing their opening whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(2) Keeping theatre sites or acquiring interests in theatre sites in Schine towns and announcing the proposed construction of a theatre whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(3) Announcing the proposed construction of a theatre in a Schine town whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(4) Communicating with the distributor defendants whenever there is any indication that another exhibitor intends to open a theatre in a Schine town and reserving for themselves in that town the feature pictures and the run that would normally have been available to such other exhibitor.

(5) Interfering with arrangements, financial, real estate, contractual, or otherwise, being negotiated by other exhibitors with third parties for the acquisition [fol. 20] of theatre sites or the acquisition, construction, or operation of theatres by such other exhibitors in Schine towns.

VI. Effect of Violations of Law

50

As a result of the contracts, combinations, and conspiracies of the Schine defendants with each other and with the distributor defendants, and of the contracts, combinations, and conspiracies of the distributor defendants with each other, and as the result of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high-class motion pictures by the Schine defendants in the Schine towns as above alleged, in most instances all other exhibitors who operate a theatre, or theatres, in competition with the Schine defendants, or any of them, are systematically excluded from the opportunity to procure high-class pictures under fair, competitive conditions on first or preferred run.

51

Furthermore, as the result of the contracts, combinations, and conspiracies alleged above and of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high-class motion pictures by the Schine defendants in the Schine towns, in practically every situation where any other exhibitor is in competition with the Schine defendants, or any of them, he is systematically relegated to a secondary, inferior position where he may obtain motion pictures only on second or subsequent run, no matter how fine his theatre, or theatres, may be and no matter how much he would be willing to pay for pictures in a free, open, and untrammeled market.

[fol. 21] 52

In many of the Schine towns, other exhibitors have been forced out of business or compelled to dispose of their theatres by the Schine defendants in combination with the distributor defendants, leaving the Schine defendants as the only exhibitors in said towns. Other exhibitors competing with the Schine defendants have been caused to sustain losses or reduced revenue from the operation of their theatres.

53

In the closed towns controlled by the Schine defendants, the public has been denied the benefits of free enterprise and open competition in the exhibition of motion pictures. In such towns there is no competition between theatres in admission prices, variety of entertainment, service, or in other respects. In practically all the Schine towns the public has been deprived of the benefits which flow from free enterprise and open competition.

54

By virtue of the monopolistic power of the Schine defendants, individuals are denied the right of engaging in the business of exhibiting motion pictures in the Schine towns, or any of them, on a fair, competitive basis.

55

As the result of the monopolization and contracts, combinations and conspiracies, as alleged above, interstate trade and commerce in motion-picture films has been unreasonably restrained, and the public has been subjected to the evils incident to the restraint of competition among exhibitors of motion-picture films.

[fol. 22]

56

Unless perpetually enjoined by the order of this Court, the defendants herein will continue to engage in the alleged unlawful monopoly and contracts, combinations and conspiracies to monopolize and restrain trade, with the result that the monopoly and the attempted monopoly by the Schine defendants will be strengthened and interstate trade and commerce in motion-picture films will be unreasonably restrained.

57

Furthermore, the circuit buying power of the Schine defendants is now so great that its continued existence will unreasonably restrain trade and stifle competition in the exhibition of motion pictures in violation of the Sherman Anti-Trust Act in all towns where the Schine defendants have or may hereafter acquire theatres, and will subject competing exhibitors to other and additional restraints,

even if the foregoing restraints are enjoined, unless the circuit buying power is eliminated. Said circuit buying power can be eliminated only by the dissolution of the Schine circuit.

VII. Relief Prayed

Wherefore, Plaintiff prays:

(1) That summons issue directed to each and every defendant commanding it or him to appear herein and answer the allegations contained in this complaint and to abide by and perform such order and decrees as the Court may make in the premises.

(2) That the Court issue its preliminary injunction restraining the Schine defendants, and each of them, from opening any of their closed theatres and from building, [fol. 23] buying, leasing, or otherwise acquiring or operating any additional theatres, or from acquiring any further interest, or interests, in any additional theatres or theatre sites, either directly or indirectly, through the acquisition thereof by subsidiary or association corporations, or otherwise, until the final decree herein or until the further order of this Court.

(3) That upon final hearing of this cause, the Court order, adjudge and decree that the contracts, combinations and conspiracies in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, are illegal and violative of the Sherman Anti-Trust Act.

(4) That the defendants herein, and each of them, and each and all of their respective officers and directors, and each and all of their respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the attempts at monopolization, the monopolies, the contracts, combinations and conspiracies, and all restraints of said interstate trade and commerce in motion pictures described herein, and from entering into and carry out, directly or indirectly, expressly or impliedly, any monopolies, contracts, combinations, and conspiracies, or restraints of interstate trade and commerce similar to those alleged to be illegal.

(5) That the distributor defendants herein, and each and all of their respective officers and directors, and each and all of their respective servants, agents and employees, and all persons acting or claiming to act on behalf of said defendants, or any of them, be perpetually enjoined and restrained from licensing feature pictures for exhibition on [fol. 24] any run at any theatre in any of the Schine towns, except upon a local competitive basis whereby all theatres operating in each of said towns will have an equal opportunity to license pictures for exhibition without regard to whether those theatres, or any of them, form or constitute a part of a circuit of theatres.

(6) That the corporate Schine defendants, and each of them, be dissolved, and that the respective properties of said corporate defendants and of the individual Schine defendants be divested and rearranged under several separate and independent corporations or companies in such manner as to terminate effectively the aforesaid monopolistic control in the licensing and exhibition of motion pictures and to prevent further violations of the Sherman Anti-Trust Act, and that said Schine defendants, their officers, directors, agents and representatives be required to make such divestiture and conveyances of their stockholdings and properties as shall be necessary in order to accomplish such dissolution.

(7) That the Court appoint such receivers and trustees as may be necessary and appropriate to effectuate a dissolution of the corporate Schine defendants, and each of them, and a divestiture and rearrangement of the respective properties of said corporate defendants and of the individual Schine defendants in such manner as may effectively bring about the elimination of the aforesaid monopoly in the licensing and exhibition of motion pictures.

(8) That, after such dissolution and divestiture and rearrangements of properties, the Schine defendants, and each of them be perpetually enjoined and restrained from acquiring any additional theatres or financial interests therein, except where they shall establish to the satisfaction of this Court that such acquisitions will not unreasonably [fol. 25] restrain competition or create, or tend to create, a monopoly in the licensing of feature pictures or in the operation of motion picture theatres in any of the cities or towns

in which the Schine defendants may be permitted by order of this Court to operate theatres.

(9) That the plaintiff recover its costs and disbursements.

(10) That the plaintiff shall have such other and further relief as the Court shall deem just and proper.

United States of America. By George L. Grobe, United States Attorney for the Wsetern District of New York.

Frank Murphy, Attorney General; Thurman Arnold, Assistant Attorney General; Wendell Berge, Holmes Baldridge, Paul Williams, Shelby Fitze, Special Assistants to the Attorney General; Seymour Krieger, Special Attorney.

[fol. 26] *Duly sworn to by Shelby Fitze. Jurat omitted in printing.*

[fol. 27] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AMENDED COMPLAINT

To the Honorable, the Judges of the District Court of the United States for the Western District of New York:

I. Jurisdiction and Venue

1

The United States of America, by George L. Grobe, United States Attorney for the Western District of New York, acting under the direction of the Attorney General, brings this proceeding under Section 4 of the Act of Congress [fol. 28] of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," said Act being commonly known as the Sherman Anti-Trust Act, against the above named defendants in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.

2

The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts to

monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce among the several States of the United States and with foreign countries, have been and are conceived, carried out and made effective, in part, within the Western District of New York, and many of the unlawful acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives, within, said District. The interstate trade and commerce involved in the motion picture industry, as hereinafter described, is carried on, in part, within the said District.

II. Description of Defendants and Non-defendant Distributors

3

Schine Chain Theatres, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

4

Schine Circuit, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

[fol. 29] 5

Schine Theatrical Co., Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

6

Schine Enterprises Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 1250 Sixth Avenue, New York, New York.

7

Schine Chain Theatres of Ohio, Inc., is a corporation organized and existing under the laws of the State of Delaware with David M. Donley, Union Commerce Building, Cleveland, Ohio, as agent.

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10

J. Myer Schine is a resident of Gloversville, New York.

11

Louis W. Schine is a resident of Gloversville, New York.

[fol. 30]

12

John A. May is a resident of Gloversville, New York.

13

The defendants named and described above in paragraph 3 to 12, inclusive, are sometimes hereinafter collectively referred to as the "Schine defendants."

14

Loew's, Incorporated, hereinafter referred to as Loew's, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 1540 Broadway, in the City of New York, New York.

15

R. K. O. Radio Pictures, Inc., hereinafter referred to as RKO, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1270 Sixth Avenue, in the City of New York, New York.

16

(a) Universal Pictures Company, Inc., hereinafter referred to as Universal, is a corporation organized and existing under the laws of the State of Delaware, and has its

principal place of business at 1250 Sixth Avenue, in the City of New York, New York.

(b) Universal Film Exchanges, Inc., hereinafter referred to as Universal Film, a subsidiary of Universal, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1250 Sixth Avenue, in the City of New York, New York.

[fol. 31]

17

Twentieth Century-Fox Film Corporation, hereinafter referred to as Fox, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 444 West 56th Street, in the City of New York, New York.

18

United Artists Corporation, hereinafter referred to as United Artists, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 729 Seventh Avenue, in the City of New York, New York.

19

Columbia Pictures Corporation, hereinafter refer-ed to as Columbia, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 729 Seventh Avenue, in the City of New York, New York.

20

(a) Warner Bros. Pictures, Inc., hereinafter referred to as Warner Bros., is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

(b) Vitagraph, Inc., hereinafter referred to as Vitagraph, a wholly owned subsidiary of Warner Bros., is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

[fol. 32]

21

(a) Paramount Pictures, Inc., hereinafter referred to as Paramount, is a corporation organized and existing un-

der the laws of the State of New York, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

(b) Paramount Film Distributing Corporation, hereinafter referred to as Paramount Film, a wholly owned subsidiary of Paramount, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

22

The defendants named and described above in paragraphs 16, 18 and 19 are sometimes hereinafter collectively referred to as the "distributor defendants" and the companies named in paragraphs 14, 15, 17, 20 and 21 as "non-defendant distributors."

23

The Schine defendants are engaged in the business of exhibiting motion pictures in the States of New York, Ohio, Kentucky, Delaware, and Maryland, the Dominion of Canada, and other localities unknown to plaintiff, and operate and control what is commonly referred to in the motion picture industry as a circuit of theatres. The corporate Schine defendants, directly or through subsidiaries of affiliates, and the individual Schine defendants, individually or through corporations and companies controlled by them, own, operate, or control approximately 165 theatres in the following cities and towns, and in other cities and towns unknown to plaintiff: *State of New York:* Amsterdam, Ballston Spa, Carthage, Glens Falls, Gloversville, Hamilton, [fol. 33] Herkimer, Hudson Falls, Ilion, Little Falls, Malone, Massina, Mechanicville, Norwich, Odgensburg, Oneonta, Saranac Lake, Tupper Lake, Watertown, Whitehall, Auburn, Avon, Bath, Buffalo, Canadaigua, Corning, Cortland, Geneva, Lockport, Newark, Oswego, Penn Yan, Perry, Rochester, Salamanca, Seneca Falls, and Syracuse; *State of Ohio:* Ashland, Athens, Bellefontaine, Bucyrus, Delaware, Fostoria, Kent, Medina, Mt. Vernon, Norwalk, Piqua, Revenna, Shelby, Tiffin, Van Wert, and Wooster; *State of Kentucky:* Harlan, Lexington, Maysville, Pikesville, Richmond, Paris, and Corbin; *State of Delaware:* Laurel and Milford; *State of Maryland:* Cambridge, Easton, Hurlock, Federalsburg, and Salisbury. The aforesaid towns and

cities in which the Schine defendants operate theatres are hereinafter collectively referred to as the Schine towns. There is a relationship between the various corporate Schine defendants; however, the precise function performed by each corporate Schine defendant and the relationship between it and the other corporate Schine defendants and between it and the individual Schine defendants is unknown to plaintiff. The numerous corporations which form a part of the Schine organization and which are subsidiary to or affiliated with the corporate Schine defendants are also unknown to plaintiff.

24

The defendant J. Myer Schine is President and a Director of the defendant Schine Chain Theatres, Inc.; the defendant Louis W. Schine is Secretary-Treasurer and a Director of the defendant Schine Chain Theatres, Inc.; and the defendant John A. May is Comptroller and a Director of the defendant Schine Chain Theatres, Inc. The said individual defendants own substantial interests in and control and are in active charge of the management, direction, and [fol. 34] operation of the corporate Schine defendants, their affiliates and subsidiaries.

25

The distributor defendants, viz., Universal, Universal Film, United Artists, and Columbia and the non-defendant distributors, viz., Warner Bros., Vitagraph, Paramount Film, Loew's, R. K. O. and Fox are engaged, either directly or through subsidiary or associated companies, in the business of distributing motion picture films in interstate commerce throughout the United States and Canada, including the States of New York, Ohio, Maryland, Delaware, and Kentucky. These distributors maintain branch offices, called film exchanges, in Albany and Buffalo, New York, Philadelphia, Pennsylvania, Washington, District of Columbia, and Cleveland and Cincinnati, Ohio, from which they distribute films to exhibitors in New York, Ohio, Maryland, Delaware, and Kentucky, with the exception of United Artists, which maintains no exchange at Albany, New York. The motion picture films distributed by said distributors are produced in the studios of motion picture producers located chiefly in the State of California. The films are transported by them into the States of New York,

Ohio, Maryland, Delaware, and Kentucky for exhibition in the various towns and cities of said states; and after the pictures are exhibited in accordance with contractual requirements, the theatre operators return said motion picture films to them for further circulation and transportation in interstate commerce.

III. Definition of Terms

26

Exhibitor—The term "exhibitor" includes, without limitation, all persons, partnerships, associations, and corpo- [fol.35] rations engaged in the ownership or operation of theatres for the exhibition of motion pictures.

27

Distributor—A distributor is a person, firm or corporation engaged in the business of licensing the exhibition of motion pictures and distributing the positive prints of these motion pictures to the exhibitors whom it licenses to exhibit them. Although the prints are usually licensed to the exhibitor, the arrangement is frequently referred to in the industry as a sale.

28

Exchange—An Exchange is an office maintained by a distributor for the purpose of soliciting contracts for the exhibition of its pictures in theatres situated throughout the territory surrounding the exchange, and for the physical distribution of such films throughout this territory. An exchange usually has facilities for the receipt, storage and subsequent shipment to exhibitors of films and advertising matter concerning them.

29

Motion picture season—The motion picture season is generally spoken of as covering the period from September 1 of one year to August 31 of the next.

30

Feature picture—A feature picture is any motion picture, the length of the film of which is approximately five thousand feet or more (approximately five reels) and the running time for the exhibition of which is generally sixty minutes or more.

[fol. 36] 31

Short subject—A short subject is a motion picture generally consisting of one or two reels (of approximately one thousand feet per reel) the running time for the exhibition of which is generally eight minutes for a one reel subject to twenty minutes for a two reel subject.

32

First run—A first run is the initial exhibition of a motion picture in any zone, and is the run which normally grosses larger box office returns than any other run in the zone. The term has great latitude of meaning, because of indefiniteness of determination of the confines of the zone with reference to which the term may be used in particular instances.

33

Second run—A second run is the exhibition of a motion picture in any zone next subsequent to its first-run showing therein.

34

Subsequent run—A subsequent run is any exhibition of a motion picture in a zone subsequent to its first-run showing therein. Such run may be second-run, third-run, fourth-run, and so on.

35

First-run Theatre—A first-run theatre is a motion picture theatre which customarily exhibits feature pictures on first run.

36

Second-run Theatre—A second-run theatre is a motion picture theatre which customarily exhibits feature pictures on second run.

[fol. 37] 37

Subsequent-run Theatre—A subsequent-run theatre is a motion picture theatre which customarily exhibits feature pictures on subsequent run.

38

Single and double feature programs—A single feature program is ordinarily composed of the exhibition of a single film of feature length accompanied by other entertainment,

either in the form of short subjects and news reels or, sometimes, vaudeville. A double feature program is one composed of the exhibition of two feature length films on on program for a single admission price.

39

First class picture—A first class picture is a feature picture which, by reason of either its large cost of production, cast of well-known players, direction, story, advertising exploitation, musical score, or photography, or any combination of those factors, is likely to have strong box office appeal.

40

Protection—Protection is an agreement by a distributor, in licensing the exhibition of a film in a theatre, that it will not permit the exhibition of that film within a specified contiguous area for a specified period of time after the last exhibition thereof in said theatre. The area of protection is designated as the "zone", and the period of time as the "clearance."

41

Closed town—A closed town is a town in which one exhibitor controls and operates all the theatres.

[fol. 38] IV. THE POSITION OF THE DISTRIBUTOR DEFENDANTS AND THE NON-DEFENDANT DISTRIBUTORS IN THE INDUSTRY

42

The distributors named in paragraphs 14 through 21, above, have collectively distributed during each of the past ten years approximately ninety percent of the first class feature pictures distributed throughout the United States, including the states in which the Schine defendants operate theatres.

43

Said distributors have collectively distributed during each of the past ten years approximately seventy-five percent of all feature pictures distributed throughout the United States, including the state in which the Schine defendants operate theatres.

44

The feature pictures distributed by distributors other than those named in paragraphs 14 through 21, above, and who will be referred to hereinafter as independent distributors are, for the most part, of a secondary or inferior quality. They are not widely advertised, the actors in them are not well known, their cost of production is usually small, they are not generally exhibited in first class theatres or as first class motion pictures, and the demand by the public to witness their exhibition is comparatively small. The number of satisfactory or suitable feature pictures distributed by independent distributors is wholly inadequate to supply the reasonable needs of any first class theatre. In order successfully to operate a first class theatre in any of the Schine towns, an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the distributors named in paragraphs 14 through 21, above, each year.

[fol. 39] V. Violations of Law

45

The defendants, each well knowing all the matters and things hereinbefore alleged, for at least the past ten years have violated and are now violating the provisions of the Sherman Anti-Trust Act by monopolizing, attempting to monopolize, combining and conspiring with each other to monopolize, and contracting, combining, and conspiring to restrain interstate trade and commerce in the distribution and exhibition of motion pictures, and unless restrained and prevented by this Honorable Court, the said defendants will continue to violate the provisions of the Sherman Anti-Trust Act as aforesaid. Said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies to restrain interstate trade and commerce in the distribution and exhibition of motion pictures, together with the means and instrumentalities by which they have been brought about and accomplished, will now be described in detail.

46

The Schine defendants have combined and conspired with each other and with the distributor defendants and the

non-defendant distributors to restrain interstate trade and commerce in motion pictures in practically all situations where the Schine defendants, or any one or more of them, operate theatres. The Schine defendants have attempted to monopolize and have monopolized, and have combined and conspired with each other and with the distributor defendants and the non-defendant distributors, to monopolize the first- and preferred-run exhibition of motion pictures in practically all situations where the Schine defendants, or any one or more of them operate theatres. The above monopilization, combinations and conspiracies in restraint of trade have been accomplished in the following [fol. 40] manner and by other methods to plaintiff unknown:

(a) In practically every situation where the Schine defendants operate theatres, the distributor defendants and the non-defendant distributors uniformly grant them the first- and preferred-run in preference to all competing theatres and with protection over said theatres; and in practically all situations where the Schine defendants acquire a theatre such theatre is thereafter granted priority and preference by all distributor defendants and non-defendant distributors over competing theatres and with protection over said theatres.

(b) The distributor defendants and the non-defendant distributors have consistently refused to license pictures on a local competitive basis to exhibitors in any situations where the Schine defendants operate theatres. During each of the past ten years the Schine defendants have collectively contracted with each of the distributor defendants and the non-defendant distributors for all of the feature pictures annually required for exhibition at all of the theatres operated by the Schine defendants in the Schine towns, in advance of the production and distribution of such feature pictures and before such feature pictures or any of them, have been offered to any other exhibitor in said towns, with the purpose and effect of controlling and monopolizing the supply of feature pictures available for exhibition in said towns.

(c) The distributor defendants and the non-defendant distributors have uniformly granted the Schine

defendants far greater privileges in their licensing contracts and in the exhibition of pictures than are normally granted other exhibitors. They frequently grant the Schine defendants, among other benefits and ad-
[fol. 41] vantages, substantial rejection privileges, and the right and privilege to play certain specified feature pictures without assuming any binding obligation to do so. Such rights and privileges are not, as a general rule, granted to other exhibitors.

(d) In many instances the distributor defendants and the non-defendant distributors have uniformly refused to sell a second or subsequent run in opposition to a theatre or theatres operated by the Schine defendants.

(e). The distributor defendants and the non-defendant distributors have uniformly granted the theatres operated by the Schine defendants unreasonable protection over other theatres.

(f) In many instances the distributor defendants and the non-defendant distributors have licensed motion pictures to the Schine defendants at rentals considerably less than those charged other exhibitors for comparable or less favorable runs.

(g) On many occasions the distributor defendants and the non-defendant distributors have licensed to the Schine defendants motion pictures greatly in excess of the reasonable exhibition requirements of their theatres, thus preventing other exhibitors from using said pictures at all or from getting them while they are still new.

47

Each of the distributor defendants and the non-defendant distributors has granted the uniform advantages to the Schine defendants and has imposed the uniform restraints upon competing exhibitors which have been set forth in subparagraphs 46(a) to 46(g), inclusive, in response to requests made by the Schine defendants and pursuant to agreements made with them, with knowledge of the com-
[fol. 42] petitive effect, as herein alleged, of the uniformity of action taken by all of said distributor defendants and non-defendant distributors.

48

The Schine defendants own, control and operate what is commonly referred to in the motion picture industry as a circuit of theatres. As a result of the acquisition and operation of numerous theatres, for all of which pictures are purchased by the Schine defendants, said defendants have obtained what is commonly referred to in the motion picture industry as circuit buying power. By the pressure of the combined purchasing power of their theatres, the Schine defendants have induced the distributor defendants and the non-defendant distributors to grant them the uniform privileges, contracts, and exclusive rights and to impose upon competing exhibitors the uniform restrictions and restraints set forth in subparagraphs 46(a) to 46(g), inclusive, which privileges, contracts, exclusive rights, restrictions and restraints could not have been obtained by said theatres of the Schine defendants had they been operated by independent rather than chain exhibitors. In many of the Schine towns the only theatre or theatres in operation are the theatres of the Schine circuit. Such towns are referred to as closed towns. By means of this system of circuit buying, the Schine circuit is able to maintain its local monopolies in its closed towns and to combine the power of those monopolies in negotiating for product in areas where some competing theatres exist. This method of circuit buying engaged in by the Schine defendants and the correlative method of circuit selling engaged in uniformly by the distributor defendants and the non-defendant distributors disregards completely local competitive factors in the respective areas where the Schine circuit operates theatres and creates a condition where free enterprise and open competition are completely stifled.

49

[fol. 43] By virtue of their circuit buying power, as described above, and their assurance of product, the Schine defendants have been enabled, in combination with each of the distributor defendants, and the non-defendant distributors, to effectuate and to maintain their monopoly of exhibition and to carry out the restraints of trade set forth herein, in the following manner:

(a) The Schine defendants have acquired and attempted to acquire theatres, and have forced and attempted to force

competitors out of business for many years past, in some cases as long as eighteen or twenty years ago, by the following methods and others to plaintiff unknown:

(1) Threatening to build a theatre in opposition to another exhibitor if he does not agree to sell or lease to them.

(2) Building a theatre in opposition to another exhibitor, thereby taking away his product and relegating him to an inferior position.

(3) Threatening to deprive another exhibitor of desirable product or run if he does not agree to sell or lease to them.

(4) Depriving another exhibitor of desirable product or run, thereby relegating him to an inferior position.

(5) Announcing the proposed construction or opening of a theatre or taking an inteerst in a theatre site in the neighborhood of another exhibitor, with the suggestion conveyed to that exhibitor, either directly or through third parties, that the Schine defendants intend to build and open a theatre if the other exhibitor will not agree to sell or lease to them.

[fol. 44] (6) Acquiring the superior title in a theatre controlled or operated by another exhibitor, and taking over the control or operation of such theatre.

(7) Cutting admission prices in areas where competition exists.

(8) Resorting to unusual and costly games and give-aways in areas where competition exists.

(9) Taking unreasonable protection over other exhibitors.

(b) The Schine defendants have continuously for, at least, the past ten years restrained trade and monopolized the exhibition of motion pictures in the Schine towns in the following manner, and by other methods to plaintiff unknown:

(1) Monopolizing the first and preferred runs of all the high class feature pictures distributed by the dis-

tributor defendants and the non-defendant distributors in practically all situations where the Schine defendants operate theatres, and also in some of their situations the most desirable feature pictures distributed by independent distributors.

(2) Contracting for more feature pictures distributed by the distributor defendants and the non-defendant distributors than the Schine defendants can reasonably exhibit, thus denying other exhibitors the opportunity of contracting for or exhibiting said feature pictures.

(3) Demanding and receiving unreasonable protection over other exhibitors.

(4) Demanding and receiving more favorable rental terms than other exhibitors in comparable or less favorable situations.

[fol. 45] (5) Demanding and receiving more favorable rejection privileges than other exhibitors, and other more advantageous benefits and privileges.

(6) Inducing the granting of privileges and advantages by the distributor defendants and the non-defendant distributors through entertainment, gifts, and favors tendered to their representatives.

(c) In order to maintain and perpetuate their monopoly, and in order actively to discourage competition in the Schine towns, the Schine defendants have engaged in the following practices, and in others to plaintiff unknown:

(1) Keeping theatres closed in many of their towns, and opening them or announcing their opening whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(2) Keeping theatre sites or acquiring interests in theatre sites in Schine towns and announcing the proposed construction of a theatre whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(3) Announcing the proposed construction of a theatre in a Schine town whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(4) Communicating with the distributor defendants and the non-defendant distributors, whenever there is any indication that another exhibitor intends to open a theatre in a Schine town and reserving for themselves in that town the feature pictures and the run that would normally have been available to such other exhibitor. [fol. 46] (5) Interfering with arrangements, financial, real estate, contractual, or otherwise, being negotiated by other exhibitors with third parties for the acquisition of theatre sites or the acquisition, construction, or operation of theatres by such other exhibitors in Schine towns.

VI. Effect of Violations of Law

50

As the result of the aforesaid contracts, combinations, and conspiracies of the Schine defendants with each other and with the distributor defendants and the non-defendant distributors, and as the result of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high class motion pictures by the Schine defendants in the Schine towns as above alleged, in most instances all other exhibitors who operate a theatre, or theatres, in competition with the Schine defendants, or any of them, are systematically excluded from the opportunity to procure high class pictures under fair, competitive conditions on first or preferred run.

51

Furthermore, as the result of the contracts, combinations, and conspiracies alleged above and of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high class motion pictures by the Schine defendants in the Schine towns, in practically every situation where any other exhibitor is in competition with the Schine defendants, or any of them, he is systematically relegated to a secondary, inferior position where he may obtain motion pictures only on second or subsequent run, no matter how fine his theatre, or theatres, may be and no matter how much he would be [fol. 47] willing to pay for pictures in a free, open, and untrammeled market.

52

In many of the Schine towns, other exhibitors have been forced out of business or compelled to dispose of their theatres by the Schine defendants in combination with the distributor defendants and the non-defendant distributors, leaving the Schine defendants as the only exhibitors in said towns. Other exhibitors competing with the Schine defendants have been caused to sustain losses or reduced revenue from the operation of their theatres.

53

In the closed towns controlled by the Schine defendants, the public has been denied the benefits of free enterprise and open competition in the exhibition of motion pictures. In such towns there is no competition between theatres in admission prices, variety of entertainment, service or in other respects. In practically all the Schine towns the public has been deprived of the benefits which flow from free enterprise and open competition.

54

By virtue of the monopolistic power of the Schine defendants, individuals are denied the right of engaging in the business of exhibiting motion pictures in the Schine towns, or any of them, on a fair, competitive basis.

55

As the result of the monopolization and contracts, combinations and conspiracies, as alleged above, interstate trade and commerce in motion picture films has been unreasonably restrained, and the public has been subjected to the [fol. 48] evils incident to the restraint of competition among exhibitors of motion picture films.

56

Unless perpetually enjoined by the order of this Court, the defendants herein will continue to engage in the alleged unlawful monopoly and contracts, combinations and conspiracies to monopolize and restrain trade, with the result that the monopoly and the attempted monopoly by the Schine defendants will be strengthened and interstate trade and commerce in motion picture films will be unreasonably restrained.

Furthermore, the circuit buying power of the Schine defendants is now so great that its continued existence will unreasonably restrain trade and stifle competition in the exhibition of motion pictures in violation of the Sherman Anti-Trust Act in all towns where the Schine defendants have or may hereafter acquire theatres, and will subject competing exhibitors to other and additional restraints, even if the foregoing restraints are enjoined, unless the circuit buying power is eliminated. Said circuit buying power can be eliminated only by the dissolution of the Schine circuit.

VII. Relief Prayed

Wherefore, Plaintiff prays:

(1) That summons issue directed to each and every defendant commanding it or him to appear herein and answer the allegations contained in this complaint and to abide by and perform such order and decrees as the Court may make in the premises.

[fol. 49] (2) That the Court issue its preliminary injunction restraining the Schine defendants, and each of them, from opening any of their closed theatres and from building, buying, leasing, or otherwise acquiring or operating any additional theatres, or from acquiring any further interest, or interests, in any additional theatres or theatre sites, either directly or indirectly, through the acquisition thereof by subsidiary or associated corporations, or otherwise, until the final decree herein or until the further order of this Court.

(3) That upon final hearing of this cause, the Court order, adjudge and decree that the contracts, combinations and conspiracies in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, are illegal and violative of the Sherman Anti-Trust Act.

(4) That the defendants herein, and each of them, and each and all of their respective officers and directors, and each and all of their respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or

indirectly, expressly or impliedly, the attempts at monopolization, the monopolies, the contracts, combinations and conspiracies, and all restraints of said interstate trade and commerce in motion pictures described herein, and from entering into any carrying out, directly or indirectly, expressly or impliedly, any monopolies, contracts, combinations, and conspiracies, or restraints of interstate trade and commerce similar to those alleged to be illegal.

(5) That the distributor defendants herein, and each and all of their respective officers and directors, and each and all of their respective servants, agents and employees, [fol. 50] and all persons acting or claiming to act on behalf of said defendants, or any of them, be perpetually enjoined and restrained from licensing feature pictures for exhibition on any run at any theatre in any of the Schine towns, except upon a local competitive basis whereby all theatres operating in each of said towns will have an equal opportunity to license pictures for exhibition without regard to whether these theatres, or any of them, form or constitute a part of a circuit of theatres.

6) That the corporate Schine defendants, and each of them, be dissolved, and that the respective properties of said corporate defendants and of the individual Schine defendants be divested and rearranged under several separate and independent corporations or companies in such manner as to terminate effectively the aforesaid monopolistic control in the licensing and exhibition of motion pictures and to prevent further violations of the Sherman Anti-Trust Act, and that said Schine defendants, their officers, directors, agents and representatives be required to make such divestiture and conveyances of their stockholdings and properties as shall be necessary in order to accomplish such dissolution.

(7) That the Court appoint such receivers and trustees as may be necessary and appropriate to effectuate a dissolution of the corporate Schine defendants, and each of them, and a divestiture and rearrangement of the respective properties of said corporate defendants and of the individual Schine defendants in such manner as may effectively bring about the elimination of the aforesaid monopoly in the licensing and exhibition of motion pictures.

(8) That, after such dissolution and divestiture and rearrangement of properties, the Schine defendants, and each of them be perpetually enjoined and restrained from ac-
[fol. 51] quiring any additional theatres or financial interests therein, except where they shall establish to the satisfaction of this Court that such acquisitions will not unreasonably restrain competition or create, or tend to create, a monopoly in the licensing of feature pictures or in the operation of motion pictures theatres in any of the cities or towns in which the Schine defendants may be permitted by order of this Court to operate theatres.

(9) That the plaintiff recover its costs and disbursements.

(10) That the plaintiff shall have such other and further relief as the court shall deem just and proper.

United States of America, by George L. Grobe, United States Attorney for the Western District of New York.

Thurman Arnold, by S. S., Assistant Attorney Geenral; Holmes Baldridge, by S. S., Herbert Borkland, by S. S., Special Assistants to the Attorney General; Seymour Simon, Special Attorney.

[fols. 52-53] *Duly sworn to by Herbert Borkland. Jurat omitted in printing.*

[fol. 54] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SECOND AMENDED COMPLAINT

To the Honorable, the Judges of the District Court of the United States for the Western District of New York:

I. Jurisdiction and Venue

1

The United States of America, by George L. Grobe, United States Attorney for the Western District of New York, acting under the direction of the Attorney General, brings this proceeding under Section 4 of the Act of Con-

gress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", said Act being commonly known as the Sherman Anti-Trust Act, against the above named defendants in order to prevent violations by them, jointly and severally, as hereinafter alleged, of Sections 1 and 2 of said Act.

2

The alleged unlawful acts and violations hereinafter described, including the unlawful monopoly, attempts to monopolize, combinations and conspiracies to monopolize, and contracts, combinations and conspiracies to restrain trade and commerce among the several States of the United States and with foreign countries, have been and are conceived, carried out and made effective, in part, within the Western District of New York, and many of the unlawful acts done in pursuance thereof have been performed by the defendants, or some of them, and their respective representatives, within said District. The interstate trade and commerce involved in the motion picture industry, as hereinafter described, is carried on, in part, within the said District.

II. Description of Defendants and Distributors

3

Schine Chain Theatres, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

[fol. 55]

4

Schine Circuit, Inc., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

5

Schine Theatrical Co., is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

6

Schine Enterprises Corporation is a corporation organized and existing under the laws of the State of New York

and has its principal place of business at 1250 Sixth Avenue, New York, New York.

7

Schine Chain Theatres of Ohio, Inc., is a corporation organized and existing under the laws of the State of Delaware with David M. Donley, Union Commerce Building, Cleveland, Ohio, as agent.

8

Schine Lexington Corporation is a corporation organized and existing under the laws of the State of New York and has its principal place of business in Gloversville, New York.

9

Chesapeake Theatres Corporation is a corporation organized and existing under the laws of the State of Maryland and has its principal place of business in Gloversville, New York.

10

J. Myer Schine is a resident of Gloversville, New York.

11

Louis W. Schine is a resident of Gloversville, New York.

12

John A. May is a resident of Gloversville, New York.

13

The defendants named and described above in paragraph 3 to 12, inclusive, are sometimes hereinafter collectively referred to as the "Schine defendants."

14

Loew's, Incorporated, hereinafter referred to as Loew's, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 1540 Broadway, in the City of New York, New York.

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16

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(b) Universal Film Exchanges, Inc., hereinafter referred to as Universal Film, a subsidiary of Universal, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1250 Sixth Avenue, in the City of New York, New York.

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20

(a) Warner Bros. Pictures, Inc., hereinafter referred to as Warner Bros., is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

(b) Vitagraph, Inc., hereinafter referred to as Vitagraph, a wholly owned subsidiary of Warner Bros., is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 321 West 44th Street, in the City of New York, New York.

21

(a) Paramount Pictures, Inc., hereinafter referred to as Paramount, is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

[fol. 57] (b) Paramount Film Distributing Corporation, hereinafter referred to as Paramount Film, a wholly owned subsidiary of Paramount, is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 1501 Broadway, in the City of New York, New York.

22

The distributors named and described above are sometimes hereinafter collectively referred to as "the distributors."

23

The Schine defendants are engaged in the business of exhibiting motion pictures in the States of New York, Ohio, Kentucky, Delaware, and Maryland, the Dominion of Canada, and other localities unknown to plaintiff, and operate and control what is commonly referred to in the motion picture industry as a circuit of theatres. The corporate Schine defendants, directly or through subidiaries or affiliates, and the individual Schine defendants, individually or through corporations and companies controlled by them, own, operate, or control approximately 165 theatres in the following cities and towns, and in other cities and towns unknown to plaintiff: *State of New York:* Amsterdam, Ballston Spa, Carthage, Glen Falls, Gloversville, Hamilton, Herkimer, Hudson Falls, Ilion, Little Falls, Malone, Massina, Mechanicville, Norwich, Ogdensburg, Oneonta, Saranac Lake, Tupper Lake, Watertown, Whitehall, Auburn, Avon, Bath, Buffalo, Canadaigua, Corning, Cortland, Geneva, Lockport, Newark, Oswego, Penn Yan, Perry, Rochester,

Salamanca, Seneca Falls, and Syracuse; *State of Ohio:* Ashland, Athens, Bellefontaine, Bucyrus, Delaware, Fostoria; Kent Medina, Mt. Vernon, Norwalk, Piqua, Revenna, Shelby, Tiffin, Van Wert, and Wooster; *State of Kentucky:* Harlan, Lexington, Maysville, Pikesville, Richmond, Paris, and Corbin; *State of Delaware:* Laurel and Milford; *State of Maryland:* Cambridge, Easton, Hurlock, Federalsburg, and Salisbury. The aforesaid towns and cities in which the Schine defendants operate theatres are hereinafter collectively referred to as the Schine towns. There is a relationship between the various corporate Schine defendants; however, the precise function performed by each corporate Schine defendant and the relationship between it and the other corporate Schine defendants and between it and the individual Schine defendants is unknown to plaintiff. The numerous corporations which form a part of the Schine organization and which are subsidiary to or affiliated with the corporate Schine defendants are also unknown to plaintiff.

24

The defendant J. Myer Schine is President and a Director of the defendant Schine Chain Theatres, Inc.; the defendant Louis W. Schine is Secretary-Treasurer and a Director of the defendant Schine Chain Theatres, Inc.; and the defendant John A. May is Comptroller and a Director of the defendant Schine Chain Theatres, Inc. The said individual defendants own substantial interests in and control and are in active charge of the management, direction, and operation of the corporate Schine defendants, their affiliates and subsidiaries.

25

The distributors, viz., Universal, Universal Film, United Artists, and Columbia, Warner Bros., Vitagraph, Para- [fol. 58] mount Film, Loew's R. K. O. and Fox are engaged, either directly or through subsidiary or associated companies, in the business of distributing motion picture films in interstate commerce throughout the United States and Canada, including the States of New York, Ohio, Maryland, Delaware, and Kentucky. These distributors maintain branch offices, called film exchanges, in Albany and Buffalo, New York, Philadelphia, Pennsylvania, Washington, District of Columbia, and Cleveland and Cincinnati, Ohio, from which they distribute films to exhibitors in New York,

Ohio, Maryland, Delaware, and Kentucky, with the exception of United Artists, which maintains no exchange at Albany, New York. The motion picture films distributed by said distributors are produced in the studios of motion picture producers located chiefly in the State of California. The films are transported by them into the States of New York, Ohio, Maryland, Delaware, and Kentucky for exhibition in the various towns and cities of said states; and after the pictures are exhibited in accordance with contractual requirements, the theatre operators return said motion picture films to them for further circulation and transportation in interstate commerce.

III. Definition of Terms

26

Exhibitor. The term "exhibitor" includes, without limitation, all persons, partnerships, associations, and corporations engaged in the ownership or operation of theatres for the exhibition of motion pictures.

27

Distributor. A distributor is a person, firm or corporation engaged in the business of licensing the exhibition of motion pictures and distributing the positive prints of these motion pictures to the exhibitors whom it licenses to exhibit them. Although the prints are usually licensed to the exhibitor, the arrangement is frequently referred to in the industry as a sale.

28

Exchange. An Exchange is an office maintained by a distributor for the purpose of soliciting contracts for the exhibition of its pictures in theatres situated throughout the territory surrounding the exchange, and for the physical distribution of such films throughout this territory. An exchange usually has facilities for the receipt, storage and subsequent shipment to exhibitors of films and advertising matter concerning them.

29

Motion Picture Season. The motion picture season is generally spoken of as covering the period from September 1 of one year to August 31 of the next.

30

Feature Picture. A feature picture is any motion picture, the length of the film of which is approximately five thousand feet or more (approximately five reels) and the running time for the exhibition of which is generally sixty minutes or more.

[fol. 59]

31

Short Subject. A short subject is a motion picture generally consisting of one or two reels (of approximately one thousand feet per reel) the running time for the exhibition of which is generally eight minutes for a one reel subject to twenty minutes for a two reel subject.

32

First Run. A first run is the initial exhibition of a motion picture in any zone, and is the run which normally grosses larger box office returns than any other run in the zone. The term has great latitude of meaning, because of indefiniteness of determination of the confines of the zone with reference to which the term may be used in particular instances.

33

Second run. A second run is the exhibition of a motion picture in any zone next subsequent to its first-run showing therein.

34

Subsequent Run. A subsequent run is any exhibition of a motion picture in a zone subsequent to its first-run showing therein. Such run may be second-run, third-run, fourth-run, and so on.

35

First-run Theatre. A first-run theatre is a motion picture theatre which customarily exhibits feature pictures on first run.

36

Second-run Theatre. A second-run theatre is a motion picture theatre which customarily exhibits feature pictures on second run.

37

Subsequent-run Theatre. A subsequent-run theatre is a motion picture theatre which customarily exhibits feature pictures on subsequent run.

38

Single and Double Feature Programs. A single feature program is ordinarily composed of the exhibition of a single film of feature length accompanied by other entertainment, either in the form of short subjects and news reels, or sometimes, vaudeville. A double feature program is one composed of the exhibition of two feature length films on one program for a single admission price.

39

First Class Picture. A first class picture is a feature picture which, by reason of either its large cost of production, cast of well-known players, direction, story, advertising exploitation, musical score, or photography, or any combination of those factors, is likely to have strong box office appeal.

40

[fol. 60] *Protection*—Protection is an agreement by a distributor, in licensing the exhibition of a film in a theatre, that it will not permit the exhibition of that film within a specified contiguous area for a specified period of time after the last exhibition thereof in said theatre. The area of protection is designated as the "zone," and the period of time as the "clearance."

41

Closed Town—A closed town is a town in which one exhibitor controls and operates all the theatres.

IV. The Position of the Distributors in the Industry

42

The distributors named in paragraphs 14 through 21, above, have collectively distributed during each of the past ten years approximately ninety percent of the first class feature pictures distributed throughout the United States,

including the states in which the Schine defendants operate theatres.

43

Said distributors have collectively distributed during each of the past ten years approximately seventy-five percent of all feature pictures distributed throughout the United States, including the states in which the Schine defendants operate theatres.

44

The feature pictures distributed by distributors other than those named in paragraphs 14 through 21, above, and who will be referred to hereinafter as independent distributors are, for the most part, of a secondary or inferior quality. They are not widely advertised, the actors in them are not well known, their cost of production is usually small, they are not generally exhibited in first class theatres or as first class motion pictures, and the demand by the public to witness their exhibition is comparatively small. The number of satisfactory or suitable feature pictures distributed by independent distributors is wholly inadequate to supply the reasonable needs of any first class theatre. In order successfully to operate a first class theatre in any of the Schine towns, an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the distributors named in paragraphs 14 through 21, above, each year.

V. Violations of Law

45

The defendants, each well knowing all the matters and things hereinbefore alleged, for at least the past ten years have violated and are now violating the provisions of the Sherman Anti-Trust Act by monopolizing, attempting to monopolize, combining and conspiring with each other to monopolize, and contracting, combining, and conspiring to restrain interstate trade and commerce in the distribution [fol. 61] and exhibition of motion pictures, and, unless restrained and prevented by this Honorable Court, the said defendants will continue to violate the provisions of the Sherman Anti-Trust Act as aforesaid. Said monopoly, attempts to monopolize, combination and conspiracy to monopolize, and contracts, combinations, and conspiracies to restrain interstate trade and commerce in the distribution

and exhibition of motion pictures, together with the means and instrumentalities by which they have been brought about and accomplished, will now be described in detail.

46

The Schine defendants have combined and conspired with each other and with the distributors to restrain interstate trade and commerce in motion pictures in practically all situations where the Schine defendants, or any one or more of them, operate theatres. The Schine defendants have attempted to monopolize and have monopolized, and have combined and conspired with each other and with the distributors, to monopolize the first-and preferred-run exhibition of motion pictures in practically all situations where the Schine defendants, or any one or more of them operate theatres. The above monopolization, combinations and conspiracies in restraint of trade have been accomplished in the following manner and by other methods to plaintiff unknown:

(a) In practically every situation where the Schine defendants operate theatres, the distributors uniformly grant them the first-and preferred-run in preference to all competing theatres and with protection over said theatres; and in practically all situations where the Schine defendants acquire a theatre such theatre is thereafter granted priority and preference by all distributors over competing theatres and with protection over said theatres.

(b) The distributors have consistently refused to license motion pictures on a local competitive basis to exhibitors in any situations where the Schine defendants operate theatres. During each of the past ten years the Schine defendants have collectively contracted with each of the distributors for all of the feature pictures annually required for exhibition at all of the theatres operated by the Schine defendants in the Schine towns, in advance of the production and distribution of such feature pictures and before such feature pictures or any of them, have been offered to any other exhibitor in said towns, with the purpose and effect of controlling and monopolizing the supply of feature pictures available for exhibition in said towns.

(c) The distributors have uniformly granted the Schine defendants far greater privileges in their licensing contracts

and in the exhibition of pictures than are normally granted other exhibitors. They frequently grant the Schine defendants, among other benefits and advantages, substantial rejection privileges, and the right and privilege to play certain [fol. 62] specified feature pictures without assuming any binding obligation to do so. Such rights and privileges are not, as a general rule, granted to other exhibitors.

(d) In many instances the distributors have uniformly refused to sell a second or subsequent run in opposition to a theatre or theatres operated by the Schine defendants.

(e) The distributors have uniformly granted the theatres operated by the Schine defendants unreasonable protection over other theatres.

(f) In many instances the distributors have licensed motion pictures to the Schine defendants at rentals considerably less than those charged other exhibitors for comparable or less favorable runs.

(g) On many occasions the distributors have licensed to the Schine defendants motion pictures greatly in excess of the reasonable exhibition requirements of their theatres, thus preventing other exhibitors from using said pictures at all or from getting them while they are still new.

47

Each of distributors has granted the uniform advantages to the Schine defendants and has imposed the uniform restraints upon competing exhibitors which have been set forth in subparagraphs 46(a) to 46(g), inclusive, in response to requests made by the Schine defendants and pursuant to agreements made with them, with knowledge of the competitive effect, as herein alleged, of the uniformity of action taken by all of said distributor defendants and non-defendant distributors.

48

The Schine defendants own, control and operate what is commonly referred to in the motion picture industry as a circuit of theatres. As a result of the acquisition and operation of numerous theatres, for all of which pictures are purchased by the Schine defendants, said defendants have obtained what is commonly referred to in the motion picture industry as circuit buying power. By the pressure

of the combined purchasing power of their theatres, the Schine defendants have induced the distributors to grant them the uniform privileges, contracts, and exclusive rights and to impose upon competing exhibitors the uniform restrictions and restraints set forth in subparagraphs 46(a) to 46(g), inclusive, which privileges, contracts, exclusive rights, restrictions and restraints could not have been obtained by said theatres of the Schine defendants had they been operated by independant rather than chain exhibitors. In many of the Schine towns the only theatre or theatres in operation are the theatres of the Schine circuit. Such towns are referred to as closed towns. By means of this system of circuit buyin ,, the Schine circuit is able to maintain its local monopolies in its closed towns and to combine the power of those monopolies in negotiating for product in areas where some competing theatres exist. This method of circuit buying engaged in by the Schine defend- [fol. 63] ants and the correlative method of circuit selling engaged in uniformly by the distributor defendants and the non-defendant distributors disregards completely local competitive factors in the respective areas where the Schine circuit operates theatres and creates a condition where free enterprise and open competition are completely stifled.

49

By virtue of their circuit buying power, as described above, and their assurance of product, the Schine defendants have been enabled, in combination with each of the distributors, to effectuate and to maintain their monopoly of exhition and to carry out the restraints of trade set forth herein, in the following manner:

(a) The Schine defendants have acquired and attempted to acquire theatres, and have forced and attempted to force competitors out of business for many years past, in some cases as long as eighteen or twenty years ago, by the following methods and others to plaintiff unknown:

1. Threatening to build a theatre in opposition to another exhibitor if he does not agree to sell or lease to them.

(2) Building a theatre in opposition to another exhibitor, thereby taking away his product and relegating him to an inferior position.

(3) Threatening to deprive another exhibitor of desirable product or run if he does not agree to sell or lease to them.

(4) Depriving another exhibitor of desirable product or run, thereby relegating him to an inferior position.

(5) Announcing the proposed construction or opening of a theatre or taking an interest in a theatre site in the neighborhood of another exhibitor, with the suggestion conveyed to that exhibitor, either directly or through third parties, that the Schine defendants intend to build and open a theatre if the other exhibitor will not agree to sell or lease to them.

(6) Acquiring the superior title in a theatre controlled or operated by another exhibitor, and taking over the control or operation of such theatre.

(7) Cutting admission prices in areas where competition exists.

(8) Resorting to unusual and costly games and give-aways in areas where competition exists.

(9) Taking unreasonable protection over other exhibitors.

(b) The Schine defendants have continuously for, at least, the past ten years restrained trade and monopolized the exhibition of motion pictures in the Schine towns in the following manner, and by other methods to plaintiff unknown:

[fol. 64] (1) Monopolizing the first and preferred runs of all the high class feature pictures distributed by the distributors in practically all situations where the Schine defendants operate theatres, and also in some of their situations the most desirable feature pictures distributed by independent distributors.

(2) Contracting for more feature pictures distributed by the distributors than the Schine defendants can reasonably exhibit, thus denying other exhibitors the opportunity of contracting for or exhibiting said feature pictures.

(3) Demanding and receiving unreasonable protection over other exhibitors.

(4) Demanding and receiving more favorable rental terms than other exhibitors in comparable or less favorable situations.

(5) Demanding and receiving more favorable rejection privileges than other exhibitors, and other more advantageous benefits and privileges.

(6) Inducing the granting of privileges and advantages by the distributors through entertainment, gifts, and favors tendered to their representatives.

(c) In order to maintain and perpetuate their monopoly, and in order actively to discourage competition in the Schine towns, the Schine defendants have engaged in the following practices, and in others to plaintiff unknown:

(1) Keeping theatres closed in many of their towns, and opening them or announcing their opening whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(2) Keeping theatre sites or acquiring interest in theatre sites in Schine towns and announcing the proposed construction of a theatre whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(3) Announcing the proposed construction of a theatre in a Schine town whenever there is any indication that another exhibitor intends to open a theatre in a Schine town.

(4) Communicating with the distributors, whenever there is any indication that another exhibitor intends to open a theatre in a Schine town and reserving for themselves in that town the feature pictures and the run that would normally have been available to such other exhibitor.

(5) Interfering with arrangements, financial, real estate, contractual, or otherwise, being negotiated by other exhibitors with third parties for the acquisition of theatre sites or the acquisition, construction, or operation of theatres by such other exhibitors in Schine towns.

50

As the result of the aforesaid contracts, combinations, and conspiracies of the Schine defendants with each other and with the distributors, and as the result of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high class motion pictures by the Schine defendants in the Schine towns as above alleged, in most instances all other exhibitors who operate a theatre, or theatres, in competition with the Schine defendants, or any of them, are systematically excluded from the opportunity to procure high class pictures under fair, competitive conditions on first or preferred run.

51

Furthermore, as the result of the contracts, combinations, and conspiracies alleged above and of the circuit buying power of the Schine circuit and of the monopolization of the exhibition of the first or preferred runs of high class motion pictures by the Schine defendants in the Schine towns, in practically every situation where any other exhibitor is in competition with the Schine defendants, or any of them, he is systematically relegated to a secondary, inferior position where he may obtain motion pictures only on second or subsequent run, no matter how fine his theatre, or theatres, may be and no matter how much he would be willing to pay for pictures in a free, open, and untrammeled market.

52

In many of the Schine towns, other exhibitors have been forced out of business or compelled to dispose of their theatres by the Schine defendants in combination with the distributors, leaving the Schine defendants as the only exhibitors in said towns. Other exhibitors competing with the Schine defendants have been caused to sustain losses or reduced revenue from the operation of their theatres.

53

In the closed towns controlled by the Schine defendants, the public has been denied the benefits of free enterprise and open competition in the exhibition of motion pictures.

In such towns there is no competition between theatres in admission prices, variety of entertainment, service or in other respects. In practically all the Schine towns the public has been deprived of the benefits which flow from free enterprise and open competition.

54

By virtue of the monopolistic power of the Schine defendants, individuals are denied the right of engaging in the business of exhibiting motion pictures in the Schine towns, or any of them, on a fair, competitive basis.

55

As the result of the monopolization and contracts, combinations and conspiracies, as alleged above, interstate trade and commerce in motion picture films has been unreasonably [fol. 66] restrained, and the public has been subjected to the evils incident to the restraint of competition among exhibitors of motion picture films.

56

Unless perpetually enjoined by the order of this Court, the defendants herein will continue to engage in the alleged unlawful monopoly and contracts, combinations and conspiracies to monopolize and restrain trade, with the result that the monopoly and the attempted monopoly by the Schine defendants will be strengthened and interstate trade and commerce in motion picture films will be unreasonably restrained.

57

Furthermore, the circuit buying power of the Schine defendants is now so great that its continued existence will unreasonably restrain trade and stifle competition in the exhibition of motion pictures in violation of the Sherman Anti-Trust Act in all towns where the Schine defendants have or may hereafter acquire theatres, and will subject competing exhibitors to other and additional restraints, even if the foregoing restraints are enjoined, unless the circuit buying power is eliminated. Said circuit buying power can be eliminated only by the dissolution of the Schine circuit.

VII. *Relief Prayed*

Wherefore, Plaintiff prays:

(1) That summons issue directed to each and every defendant commanding it or him to appear herein and answer the allegations contained in this complaint and to abide by and perform such order and decrees as the Court may make in the premises.

(2) That the Court issue its preliminary injunction restraining the Schine defendants, and each of them, from opening any of their closed theatres and from building, buying, leasing, or otherwise acquiring or operating any additional theatres, or from acquiring any further interest, or interests, in any additional theatres or theatre sites, either directly or indirectly, through the acquisition thereof by subsidiary or associated corporations, or otherwise, until the final decree herein or until the further order of this Court.

(3) That upon final hearing of this cause, the Court order, adjudge and decree that the contracts, combinations and conspiracies in restraint of interstate trade and commerce, together with the attempts to monopolize and the monopolization of the same, hereinbefore described, are illegal and violative of the Sherman Anti-Trust Act.

(4) That the defendants herein, and each of them, and each and all of their respective officers and directors, and each and all of their respective agents, servants and employees, and all persons acting or claiming to act on behalf of the defendants, or any of them, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the attempts at monopolization, the monopolies, the contracts, combinations and conspiracies, and all restraints of said interstate trade and commerce in motion pictures described herein, and from entering into any carrying out, directly or indirectly, expressly or impliedly, any monopolies, contracts, combinations, and conspiracies, or restraints of interstate trade and commerce similar to these alleged to be illegal.

. . . . . .

[fols. 67-68] (6) That the corporate Schine defendants, and each of them, be dissolved, and that the respective properties of said corporate defendants and of the individual Schine

defendants be divested and rearranged under several separate and independent corporations or companies in such manner as to terminate effectively the aforesaid monopolistic control in the licensing and exhibition of motion pictures and to prevent further violations of the Sherman Anti-Trust Act, and that said Schine defendants, their officers, directors, agents and representatives be required to make such divestiture and conveyances of their stockholdings and properties as shall be necessary in order to accomplish such dissolution.

(7) That the Court appoint such receivers and trustees as may be necessary and appropriate to effectuate a dissolution of the corporate Schine defendants, and each of them, and a divestiture and rearrangement of the respective properties of said corporate defendants and of the individual Schine defendants in such manner as may effectively bring about the elimination of the aforesaid monopoly in the licensing and exhibition of motion pictures.

(8) That, after such dissolution and divestiture and rearrangement of properties, the Schine defendants, and each of them be perpetually enjoined and restrained from acquiring any additional theatres or financial interests therein, except where they shall establish to the satisfaction of this Court that such acquisitions will not unreasonably restrain competition or create, or tend to create, a monopoly in the licensing of feature pictures or in the operation of motion picture theatres in any of the cities or towns in which the Schine defendants may be permitted by order of this Court to operate theatres.

(9) That the plaintiff recover its costs and disbursements.

(10) That the plaintiff shall have such other and further relief as the court shall deem just and proper.

United States of America, by George L. Grobe, United States Attorney for the Western District of New York. Thurman Arnold, Assistant Attorney General; Holmes Baldridge, Herbert Borkland, Special Assistants to the Attorney General; Seymour Simon, Special Attorney.

[fol. 69] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER OF THE DEFENDANTS, SCHINE CHAIN THEATRES, INC., SCHINE CIRCUIT, INC., SCHINE THEATRICAL CO., INC., SCHINE INTERPRISES CORPORATION, SCHINE-LEXINGTON CORPORATION, CHESAPEAKE THEATRES CORPORATION, J. MYER SCHINE, LOUIS W. SCHINE AND JOHN A. MAY

The defendants, Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine-Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May, by their solicitors, Edmund McCarthy and Willard S. McKay, for their answer to the second amended complaint herein, as modified and limited by plaintiff's bill of particulars, allege as follows:

First: Admit that the Plaintiff is attempting to bring this proceeding under Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopo-[fol. 70] lies," said Act being commonly known as the Sherman Anti-Trust Act, but deny that the answering defendants or any of them, have in any way violated or are violating, or intend or are about to violate any section or sections of the Act of July 2, 1890, commonly known as the Sherman Anti-Trust Act.

Second: The answering defendants deny each and every allegation contained in paragraph 2 of the amended complaint and aver that they have not, nor has any one or more of them, acted unlawfully or in violation of the Act of June 2, 1890, within the Western District of New York or elsewhere. The answering defendants further aver and allege that they are not, nor is any one or more of them, engaged in interstate commerce.

Third: Admit the allegations of Paragraphs 3, 4, 5, 6, 8, 9, 10, 11 and 12 of the amended complaint, except that they allege that the principal place of business of Schine Enterprises Corporation is at Gloversville, New York, and that the principal place of business of Chesapeake Theatres Corporation is in the State of Maryland.

Fourth: Answering the allegations of Paragraph 7 of the amended complaint, the answering defendants admit that Schine Chain Theatres of Ohio, Inc. was originally incorporated under the laws of the State of Delaware, but deny that they have knowledge or information sufficient to form a belief as to its present status, or as to its status since the year 1930.

Fifth: Answering the allegations of Paragraph 13 of the amended complaint, for the purposes of this action only, the defendants accept the designations of the answering defendants as the "Schine defendants", except insofar as the said term may be deemed to include Schine Chain Theatres of Ohio, Inc.

[fol. 71] Sixth: Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 14, 15, 16, 17, 18, 19, 20 and 21 of the amended complaint.

Seventh: Deny each and every allegation contained in Paragraph 23 of the amended complaint, except that they admit that the corporate Schine defendants, or corporate subsidiaries or affiliates of one or more of the corporate Schine defendants, operate or participate in the operation of motion picture theatres in each of the cities and towns enumerated in said Paragraph 23 except the town of Avon, New York. The answering defendants further admit that the theatres operated by the corporate Schine defendants or their subsidiary or affiliated corporation are sometimes known as a "Circuit". Except as above admitted the answering defendants deny each and every allegations contained in said Paragraph 23.

Eighth: Answering the allegations of Paragraph 24 of the amended complaint, the answering defendants admit the allegations of the first sentence thereof and further admit that the defendants J. Myer Schine and Louis W. Schine, directly or indirectly, own substantial interests in and are in active management of the defendant, Schine Chain Theatres, Inc., and further admit that the defendant, John A. May, owns a small amount of preferred stock of the corporate defendant, Schine Chain Theatres, Inc., and further admit that the individual defendants, or some of them, are officers and/or directors of most of the corporate Schine defendants their affiliates or subsidiaries,

Except as above admitted the defendants deny each and every allegation contained in said paragraph.

Ninth: Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations [fol. 72] or any of them, contained in Paragraph 25 of the amended complaint, except that the answering defendants admit that the theatres operated by the corporate Schine defendants or their subsidiaries receive positive prints of motion pictures from the "distributor defendants" and "non-defendant distributors", which positive prints are delivered by branch offices or film exchanges in Albany and Buffalo, New York, Philadelphia, Pennsylvania, Washington, D. C., and Cleveland and Cincinnati, Ohio, and that after the said positive prints are exhibited in the respective theatres to which they have been shipped, they are returned to the distributor's exchange from which they were received unless different shipping instructions have been received from the film exchange which delivered such print. The answering defendants deny that such positive prints are received, exhibited or returned in interstate trade or commerce. Except as above pleaded the answering defendants deny each and every allegations contained in Paragraph 25 of the amended complaint.

Tenth: Deny the allegations of Paragraph 26 of the amended complaint except that they admit that the term "exhibitor" includes all persons, partnerships, associations and corporations engaged in the ownership or operation of theatres for the exhibition of motion pictures.

Eleventh: Admit the allegations contained in Paragraphs 27, 28, 30, 31, 33, 34 and 38 of the amended complaint.

Twelfth: Deny the allegations contained in Paragraph 29 of the amended complaint. The answering defendants allege that the motion picture season covers generally the period from September of one year to August of the following year, but that the exact period differs with respect to the different distributors.

[fol. 73] Thirteenth: Deny the allegations contained in Paragraph 32 of the amended complaint, except that the answering defendants admit that a first run generally means the first exhibition of a motion picture in a particular

locality and a first run generally produces the largest monetary return in such locality. The term has considerable latitude of meaning.

Fourteenth: Deny the allegations of Paragraphs 35, 36, and 37 of the amended complaint.

Fifteenth: Deny the allegations contained in Paragraphs 39 and 41 of the amended complaint.

Sixteenth: Deny the allegations contained in Paragraph 40 of the amended complaint, except that the answering defendants admit and allege that it is customary for a license agreement between a distributor and an exhibitor to provide for a period of time after the exhibition of a motion picture in the exhibitor's theatre, during which the distributor will not permit its exhibition within a specified area for a specified period of time after the last exhibition thereof in such exhibitor's theatre. That the agreement by the distributor is sometimes called "protection", that the area is sometimes referred to as "zone" and that the period of time is sometimes referred to as "clearance".

Seventeenth: Deny that they have knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in Paragraphs 42 and 43 of the amended complaint.

Eighteenth: Deny each and every allegation contained in paragraph 44 of the amended complaint.

Nineteenth: Deny each and every allegation contained in Paragraphs 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56 and 57 of the amended complaint.

[fol. 74] Twentieth: Answering the allegations of Paragraphs 48 of the amended complaint, the answering defendants deny each and every allegation thereof, except that they admit that the theatres operated by the corporate Schine defendants or their affiliates or subsidiaries are sometimes known as a "circuit" and except that they admit that in some of the towns in which the Schine corporate defendants or their subsidiaries or affiliates operate a theatre or theatres, there are no other motion picture theatres.

For a First, Separate and Distinct Affirmative Defense the Answering Defendants Allege:

Twenty-First: That the amended complaint fails to state a claim upon which belief can be granted against the said defendants, or any of them.

(a) In that the amended complaint fails to state facts sufficient to constitute a cause of action in favor of the plaintiff against the said defendants or any of them, and

(b) In that the amended complaint fails to state facts sufficient to show that the answering defendants or any of them have ever violated or are now violating any act of the Congress of the United States mentioned in the said amended complaint and especially the provisions of Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce against unlawful Restraints and Monopolies," the said Act being commonly known as the Sherman Anti-Trust Law.

For a Second, Separate and Distinct Affirmative Defense the Answering Defendants Allege:

Twenty-Second: That upon the facts stated in the amended complaint herein, the Court has no jurisdiction [fol. 75] over the alleged cause of action set forth in the amended complaint in that no facts are set forth in the amended complaint showing that the answering defendants or any of them are engaged in interstate commerce.

As and for a third, separate and distinct affirmative defense the answering defendants allege:

Twenty-Third: In or about the month of July, 1938, the plaintiff instituted an action in the United States District Court for the Southern District of New York against Paramount Pictures, Inc. and other defendants therein named, which action is entitled United States of America, petitioner, v. Paramount Pictures, Inc., *et al.*, defendants, and bears Index #87-273 In Equity, alleging and claiming that the defendants named in said action had entered into contracts, combinations and conspiracies in restraint of trade in the distribution and exhibition of motion pictures, in violation of the statutes of the United States in such cases made and provided, and particularly in violation of Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209 en-

titled "An Act To Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Anti-Trust Act.

Twenty-Fourth: Subsequent to the commencement of said action and prior to the trial thereof, negotiations were instituted between the plaintiff and certain defendants in said action, to-wit: Paramount Pictures, Inc., Loew's, Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., Twentieth Century-Fox Film Corporation and their subsidiary and affiliated companies.

Twenty-Fifth: As a result of said negotiations an agreement, contract, conspiracy or "consent decree" was entered [fol. 76] into between the plaintiff and the said corporations named in paragraph Twenty-fourth hereof, and such decree was thereafter signed and entered in the said action on or about November 20, 1940.

Twenty-Sixth: As a result of said agreement, contract, conspiracy or "consent decree" and pursuant to such agreement, contract, conspiracy or "consent decree" the said corporations, Paramount Pictures, Inc., Loew's, Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., and Twentieth Century-Fox Film Corporation were dismissed as defendants in this action and were likewise dismissed as defendants in the action entitled United States of America, Plaintiff, v. Crescent Amusement Co., *et al.*, defendants, pending in the District Court of the United States for the Middle District of Tennessee, Nashville, Division, and bearing Index No. 54 Civil, and in the action entitled United States of America, plaintiff, v. Griffith Amusement Company, *et al.*, defendants, pending in the District Court of the United States for the Western District of Oklahoma and bearing Index No. 172 Civil.

Twenty-Seventh: That the said Paramount Pictures, Inc., Loew's Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc., and Twentieth Century-Fox Film Corporation were dismissed as defendants in this action as aforesaid, notwithstanding the fact that in and by a bill of particulars signed by its duly authorized Solicitors and Attorneys, and served and filed in this Court pursuant to the order of July 2, 1941, the plaintiff claims and alleges that the said corporations, Paramount Pictures, Inc., Loew's, Inc., Radio-Keith-Orpheum Corporation, Warner Bros.

Pictures, Inc. and Twentieth Century-Fox Film Corporation, who have been dismissed as defendants in this action, and who are designated in the amended complaint [fol. 77] herein as "non-defendant distributors", have collectively distributed during the past ten years approximately fifty percent (50%) of all feature pictures and approximately eighty percent (80%) of all "first-class feature pictures" distributed throughout the United States, including the States in which the answering defendants operate theatres.

Twenty-Eighty: That the said Paramount Pictures, Inc., Loew's Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc. and Twentieth Century-Fox Film Corporation were dismissed as defendants in this action as aforesaid, notwithstanding the fact that the plaintiff herein still claims, alleges and avers that the said corporations, Paramount Pictures, Inc., Loew's Inc., Radio-Keith-Orpheum Corporation, Warner Bros. Pictures, Inc. and Twentieth Century-Fox Film Corporation, are conspiring with the answering defendants allegedly in violation of the Statutes of the United States in such cases made and provided, and particularly in violation of Section 4 of the Act of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Anti-Trust Act.

Twenty-Ninth: Notwithstanding the facts as alleged in Paragraph Twenty-eighth hereof, the plaintiff has made no effort, and upon information and belief does not presently contemplate any effort, to bring any proceedings to prevent or restrain the violation by the so-called "non-defendant distributors", who were parties consentant to the said "consent decree", of the provisions of the Sherman Anti-Trust Act, which plaintiff in its bill of particulars claims are still being violated by the said "non-defendant distributors".

[fol. 78] Thirtieth: By reason of the foregoing, the answering defendants allege that the plaintiff does not come into this Court with clean hands and is not entitled to equitable relief in this action.

As and for a fourth, separate and distinct affirmative defense the answering defendants allege:

Thirty-First: That this case was set for trial before this Court on the 19th day of May, 1944.

Thirty-Second: That upon said date, the plaintiff appeared before this Court and moved the dismissal as defendants in this case, of Universal Pictures Co. Inc, Universal Film Exchanges Inc., United Artists Corp., and Columbia Pictures Corp.

Thirty-Third: That said motion was granted over the opposition of the Schine defendants. That the dismissal of the defendants Universal Pictures Co. Inc., Universal Film Exchanges Inc., United Artists Corp. and Columbia Pictures Corp. was the result of a secret agreement between the plaintiff and the above mentioned defendants, the details of which are unknown to the remaining defendants.

Thirty-Fourth: That the remaining defendants have been severely prejudiced by the dismissal of this cause as against said four above-mentioned defendants.

Thirty-Fifth: That notwithstanding the dismissal of this cause as against said four above-mentioned defendants, the plaintiff still claims that said defendants are still conspiring with the answering defendants, allegedly in violation of the Statutes of the United States, in such cases made and provided, and particularly in violation of Section 4 of the Act [fol. 79] of Congress of July 2, 1890, 26 Stat. 209, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies", commonly known as the Sherman Anti-Trust Act.

Thirty-Sixth: That notwithstanding the facts as above alleged, the plaintiff has made no effort and upon information and belief does not presently contemplate any effort to bring any proceeding to prevent or restrain the violation by said four above named defendants, who were parties hereto prior to May 19, 1944, of the provisions of the Sherman Anti-Trust Act, which plaintiff still claims are being violated by said defendants.

Thirty-Seventh: By reason of the foregoing, the answering defendants allege that the plaintiff does not come into this Court with clean hands, and is not entitled to equitable relief in this action.

As and for a fifth, separate and distinct affirmative defense the answering defendants allege:

Thirty-Eighty: The answering defendants repeat, reiterate and re-allege the allegations contained in Paragraphs Twenty-third to Thirty-seventh inclusive, with the same force and effect as if herein set forth at length.

Thirty-Ninth: That by reason of the premises the plaintiff is guilty of laches.

Wherefore, the defendants, Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co. Inc., Schine Enterprises Corporation, Schine-Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May, having fully answered the amended complaint herein, demand judgment dismissing [fol. 80] the amended complaint herein, together with costs and disbursements of this action.

Willard S. McKay, 630 Fifth Avenue, New York, New York; Edmund M. McCarthy, 70 Pine Street, New York, New York, Solicitors for Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co. Inc., Schine Enterprises Corporation, Schine-Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May.

[fol. 81] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

BILL OF PARTICULARS

1

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and for further and bet-
[fol. 82] ter particulars of the allegations contained in paragraph 44 of the complaint, and in response to paragraph II.B of the defendants' specification of demands for a bill of particulars, states that the distributors referred to by the phrase "other distributors who are not defendants

herein" are all distributors of motion pictures other than those named herein as defendants.

2

With respect to the allegations contained in paragraph 45 of the complaint, the plaintiff has heretofore filed particulars in response to paragraph III of the defendants' specification of demands for a bill of particulars.

3

For further and better particulars of the allegations contained in paragraph 46 of the complaint, and in response to paragraph IV.C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the situations referred to by the phrase "practically all situations" in paragraph 46 of the complaint are as follows: Amsterdam, N. Y.; Ashland, Ohio; Athens, Ohio; Auburn, N. Y.; Bath, N. Y.; Bellefontaine, Ohio; Bucyrus, Ohio; Buffalo, N. Y.; Cambridge, Md.; Canandaigua, N. Y.; Carthage, N. Y.; Corbin, Ky.; Corning, N. Y.; Cortland, N. Y.; Delaware, Ohio; Dolgeville, N. Y.; Easton, Md.; Fostoria, Ohio; Geneva, N. Y.; Glens Falls, N. Y.; Gloversville, N. Y.; Hamilton, N. Y.; Herkimer, N. Y.; Hudson Falls, N. Y.; Hurlock, Md.; Illion, N. Y.; Kent, Ohio; Lake Placid, N. Y.; Laurel, Del.; Lexington, Ky.; Little Falls, N. Y.; Lockport, N. Y.; Malone, N. Y.; Massena, N. Y.; Maysville, Ky.; Medina, Ohio; Milford, Del.; Mt. Vernon, Ohio; Newark, N. Y.; Norwalk, Ohio; Norwich, N. Y.; Ogdensburg, N. Y.; Oneonta, N. Y.; Oswego, [fol. 83] N. Y.; Paris, Ky.; Penn Yann, N. Y.; Perry, N. Y.; Piqua, Ohio; Ravenna, Ohio; Richmond, Ky.; Rochester, N. Y.; Salamanca, N. Y.; Salisbury, Md.; Saranac Lake, N. Y.; Seneca Falls, N. Y.; Shelby, Ohio; Syracuse, N. Y.; Tiffin, Ohio; Tupper Lake, N. Y.; Van Wert, Ohio; Watertown, N. Y.; Whitehall, N. Y.; Wooster, Ohio.

4

For further and better particulars of the allegations contained in paragraph 46(a) of the complaint, and in response to paragraph V. A(1) of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theatres to which preference or protection were granted by the distributor de-

fendants, and the distributor defendants granting such prefernce or protection are respectively as follows:

Theatre	Location	Preference and protection granted by
Strand Theatre	Ogdensburg, N. Y.	All distributor defendants
Capitol Theatre	Newark, N. Y.	All distributor defendants
Strand Theatre	Delaware, Ohio	Paramount and United Artists
Strand Theatre	Hudson Falls, N. Y.	All distributor defendants
Rialto Theatre	Lockport, N. Y.	Fox, Universal, Warner Bros., Vitagraph, Columbia, Paramount, and R. K. O.
Strand Theatre	Carthage, N. Y.	All distributor defendants
Malone Theatre	Malone, N. Y.	All distributor defendants

[fol. 84]

Vine Theatre	Mount Vernon, Ohio	Paramount, Fox, Warner Bros., R. K. O., Universal, and United Artists
Forum Theatre	Norwalk, Ohio	All distributor defendants
Colonial Theatre	Norwich, N. Y.	All distributor defendants
Van Wert Theatre	Van Wert, Ohio	All distributor defendants

5

In response to paragraph V. D. of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theatres acquired by the Schine defendants, which, after such acquisition, have been granted priority or preference over competing theatres by the distributor defendants, and the distributor defendants granting such priority or preference, are respectively as follows:

Theatre	Location	Preference and protection granted by
Strand Theatre	Ogdensburg, N. Y.	All distributor defendants
Capitol Theatre	Newark, N. Y.	All distributor defendants
Strand Theatre	Delaware, Ohio	Paramount and United Artists

Theatre	Location	Preference and protection granted by
Strand Theatre	Hudson Falls, N. Y.	All distributor defendants
Strand Theatre	Carthage, N. Y.	All distributor defendants

[fol. 85]

Forum Theatre	Norwalk, Ohio	All distributor defendants
Colonial Theatre	Norwich, N. Y.	All distributor defendants
Van Wert Theatre	Van Wert, Ohio	All distributor defendants

6

In response to paragraph V. E of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of competing theatres, over which theatres acquired by the Schine defendants have been granted priority and preference, are set forth below; the distributor defendants granting such priority and preference are stated for the respective situations in the particulars of the allegations of paragraph 46(a) of the complaint heretofore set forth: Star Theatre, Delaware, Ohio; Palace Theatre, Lockport, N. Y.; Plaza Theatre, Malone, N. Y.; Memorial Theatre, Mount Vernon, Ohio; Moose Theatre, Norwalk, Ohio; Smalley Theatre, Norwich, N. Y.; Ohio Theatre, Van Wert, Ohio.

7

For further and better particulars of the allegations contained in paragraph 46(b) of the complaint, and in response to paragraph VI. A (1) of the defendants' specification of demands for a bill of particulars, the plaintiff states that all of the distributor defendants have consistently refused to license motion pictures on a local competitive basis to the Plaza Theatre at Malone, New York; and that the defendant Fox has so refused to license to the Memorial Theatre at Mount Vernon, Ohio.

[fol. 86]

8

With respect to the allegations contained in paragraph 45 of the complaint, the plaintiff has heretofore filed particulars in response to paragraph VII. of the defendants' specification of demands for a bill of particulars.

9

For further and better particulars of the allegations contained in paragraph 46(d) of the complaint, and in response to paragraph VIII. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances comprehended by the phrase "in many instances" appearing in paragraph 46(d) of the complaint, include the following: Palace Theater, Lockport, New York; Plaza Theater, Malone, New York; Memorial Theater, Mount Vernon, Ohio; Capital Theater, Auburn, New York.

10

In response to paragraph VIII. E of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that the refusal to sell a second or subsequent run to the Plaza Theater at Malone was made at the request of the Schine defendants. With respect to the other instances hereinbefore set forth of refusal to sell a second or subsequent run in opposition to a theater or theaters operated by the Schine defendants, the plaintiff is unable to state at this time whether or not such refusal was made at the request of the Schine defendants.

11

For further and better particulars of the allegations contained in paragraph 46 (e) of the complaint, and in response to paragraph IX. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the [fol. 87] names and locations of the theaters over which it is claimed that unreasonable protection was granted to the Schine defendants by the distributor defendants, and the distributor defendants granting such unreasonable protection are as follows:

Theatre	Location	Unreasonable protection granted by
American Theatre	Canton, New York	All distributor defendants
Playhouse Theatre	Clyde, New York	All distributor defendants
Avalon Theatre	Lowville, New York	All distributor defendants

12

In response to paragraph IX. A(3) of the defendants' specification of demands for a bill of particulars, the plaintiff is unable to state at this time the precise manner in which such protection was granted.

13

For further and better particulars of the allegations contained in paragraph 46(f) of the complaint, and in response to paragraph X. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the number of instances comprehended by the phrase "in many instances" contained in paragraph 46(f) of the complaint is four.

14

In response to paragraph X. B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theatres operated by exhibitors claimed to have been charged more, for com- [fol. 88] parable or less favorable runs, than the Schine defendants include the following: Capital Theatre, Auburn, N. Y.; Palace Theatre, Corning, N. Y.; Madison Theatre, Rochester, N. Y.; Monroe Theatre, Rochester, N. Y.

15

For further and better particulars of the allegations contained in paragraph 46(g) of the complaint, and in response to paragraph XI. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the number of occasions comprehended by the phrase "on many occasions" contained in paragraph 46(g) of the complaint is four.

16

In response to paragraph XI.C of the defendant's specification of demands for a bill of particulars, the plaintiff states that the names and locations of the exhibitors, who are claimed to have been prevented from using motion pictures which were licensed to the Schine defendants in excess of the reasonable exhibition requirements of their theatres, or from obtaining said pictures while they are still new, include the following: Aleck P. Papayanakos, Canton, N. Y.; Reliance Theatres, Inc., Lockport, N. Y.;

Michael Boumansour, Malone, N. Y.; Emerson W. Long, Mount Vernon, Ohio.

17

In response to paragraph XL.F of the defendant's specification of demands for a bill of particulars, the plaintiff states that the extent to which the licensing of motion pictures to the Schine defendants prevented such other exhibitors from obtaining the same, and the manner in which such result was accomplished in the instances referred to in the preceding paragraph, are as follows:

[fol. 89]

Exhibitor	Extent of Loss of Product	Manner in which such Result was Accomplished
Aleck P. Papayanakos	Delay of 60 to 75 days in exhibition after first run.	Not known.
Reliance Theatres Inc.	Not known.	By contract with the Schine defendants.
Michael Baumansour	No product received.	By contract with the Schine defendants.
Emerson W. Long	No product received.	Not known.

18

For further and better particulars of the allegations contained in paragraph 48 of the complaint, and in response to paragraph XIII.B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the towns in which Schine maintains a local monopoly are as follows: Ashland, Ohio; Athens, Ohio; Ballston, N. Y.; Bath, N. Y.; Bellefontaine, Ohio; Bucyrus, Ohio; Cambridge, Md.; Canandaigua, N. Y.; Carthage, N. Y.; Corbin, Ky.; Cortland, N. Y.; Easton, Md.; Fostoria, Ohio; Geneva, N. Y.; Gloversville, N. Y.; Hudson Falls, N. Y.; Hurlock, Md.; Illion, N. Y.; Kent, Ohio; Laurel, Del.; Little Falls, N. Y.; Lockport, N. Y.; Milford, Del.; Mount Vernon, Ohio; Newark, N. Y.; Norwalk, Ohio; Norwich, N. Y.; Ogdensburg, N. Y.; Oneonta, N. Y.; Paris, Ky.; Penn Yan, N. Y.; Perry, N. Y.; Ravenna, N. Y.; Seneca Falls, N. Y.; Tiffin, Ohio.

19

In response to paragraph XIII.C of the defendants' specification of demands for a bill of particulars, the plain-

[fol. 90] tiff states that the names and locations of the competing theatres are as follows: Orpheum Theatre, Amsterdam, N. Y.; Capital Theatre, Auburn, N. Y.; Jubilee Theatre, Buffalo, N. Y.; New Plaza Theatre, Corning, N. Y.; Strand Theatre, Delaware, Ohio; Park Theatre, State Theatre,

. . . . . .

Ohio; Richmond, Ky.; Salamanca, N. Y.; Saranac Lake, and Paramount Theatre, Glens Falls, N. Y.; Smalley's theatre, Hamilton, N. Y.; Ada Meade Theatre and Opera House Theatre, Lexington, Ky.; Plaza Theatre, Malone, N. Y.; Hollywood Theatre and Washington Theatre, Maysville, Ky.; Medina Theatre, Medina, Ohio; Rialto Theatre, Massena, N. Y.; Strand Theatre and Orpheum Theatre, Oswego, N. Y.; Webster Theatre, Rochester, N. Y.; Uhlmans Theatre, New Theatre and Wicomico Theatre, Salisbury, Md.; Opera House Theatre, Shelby Theatre, and State Theatre, Shelby, Ohio; Ohio Theatre, Van Wert, Ohio; Liberty Theatre, Strand Theatre, and Victoria Theatre, Watertown, N. Y.

20

In response to paragraph XIII.D of the defendants' specification of demands for a bill of particulars, the plaintiff states that the identity and location of the towns, in which the plaintiff claims that the only theatre or theatres in operation are the theatres of the Schine circuit, have been set forth heretofore in response to paragraph XIII.B of the defendants' specification of demands for a bill of particulars.

21

In response to paragraph XIII.G of the defendants' specification of demands for a bill of particulars, the plaintiff states that the term "local competitive factors" includes the price offered by an exhibitor for the privilege of exhibiting a picture, and that all of the distributor de-[fol. 91] fendants have disregarded such factors in licensing motion pictures.

22

In response to paragraph XIII.H of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competing exhibitors referred to in the said paragraph 48 of the complaint include Hubert P. Wallace, Auburn, N. Y.; Sidney J. Cohen, Buffalo, N. Y.;

Michael Boumansour, Malone, N. Y.; Ralph T. Kemper, Shelby, Ohio; Carl Brinton Moore, Van Wert, Ohio; Peter C. Vournakis, Watertown, N. Y.

23

For further and better particulars of the allegations contained in paragraph 49(a) of the complaint and in response to paragraph XV.A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the motion picture theatres that the Schine defendants have acquired for many years past, as alleged in said paragraph are the following: Regent Theatre, Rialto Theater, Strand Theater, Amsterdam, N. Y.; Opera House Theater, Palace Theater, Ashland, Ohio; Athena Theater, Court Theater, Ohio Theater, Athens, Ohio; Jefferson Theater, Palace Theater, Strand Theater, Auburn Theater, Auburn, N. Y.; Capitol Theater, Ballston, N. Y.; Babcock Theater, Bath, N. Y.; Court Theater, Holland Theater, Strand Theater, Bellefontaine, Ohio; Southern Theater, State Theater, Ohio Theater, Bucyrus Theater, Bucyrus, Ohio; Granada Theater, Jubilee Theater, Riverside Theater, Buffalo, N. Y.; Arcade Theater, Grand Opera Theater, Cambridge, Md.; Playhouse Theater, Canandaigua, N. Y.; Strand Theater, Carthage, N. Y.; Hippodrome Theater, Kentucky Theater, Corbin, Ky.; Fox State Theater, New Fox Theater, Palace Theater, Corning, N. Y.; Cortland Theater, [fol. 92] State Theater, Temple Theater, Cortland, N. Y.; Star Theater, Strand Theater, Delaware, Ohio; Strand Theater, Dolgeville, N. Y.; Music Hall Theater, Avalon Theater, Easton, Md.; Rialto Theater, East Rochester, N. Y.; Temple Theater, Fairport, N. Y.; Roxy Theater, Civic Theater, State Theater, Fostoria, Ohio; Regent Theater, Temple Theater, Geneva Theater, Geneva, N. Y.; Empire Theater, Rialto Theater, Glens Falls, N. Y.; Glove Theater, Hippodrome Theater, Gloversville, N. Y.; State Theater, Hamilton, N. Y.; Liberty Theater, Herkimer, N. Y.; Strand Theater, Hudson Falls, N. Y.; Hurlock Theater, Hurlock, Md.; Capitol Theater, Opera House Theater, Illion, N. Y.; New Kent Theater, Opera House Theater, Kent, Ohio; Palace Theater, Lake Placid, N. Y.; New Waller Theater, Laurel, Del.; Ben Ali Theater, Kentucky Theater, Strand Theater, State Theater, Lexington, Ky.; Rialto Theater, Hippodrome Theater, Little Falls, N. Y.; Hi-Art Theater,

Palace Theater, Rialto Theater, Lockport, N. Y.; Plaza Theater, Malone Theater, Malone, N. Y.; Russel Theater, Maysville, Ky.; Princess Theater, Medina, Ohio; Massena Theater, Massena, N. Y.; Plaza Theater, Milford, Del.; Lyric Theater, Vine Theater, Ohio Theater, Vernon Theater, Mt. Vernon, Ohio; Capitol Theater, Newark, N. Y.; Moose Theater, Forum Theater, Norwalk, O.; Colonial Theater, Smalley Theater, Norwich, N. Y.; Star Theater, Strand Theater, Pontiac Theater, Ogdensburg, N. Y.; Oneonta Theater, Palace Theater, Strand Theater, Oneonta, N. Y.; Capitol Theater, Richardson Theater, Strand Theater, State Theater, Oswego, N. Y.; Bourbon Theater, Paris, Ky.; Elmwood Theater, Penn Yan, N. Y.; Auditorium Theater, Perry, N. Y.; Ohio Theater, Piqua Theater, Miami Theater, Piqua, Ohio; Ravenna Theater, Ravenna, Ohio; Madison Theater, State Theater, Richmond, Ky.; Dixie Theater, Grand Theater, Liberty Theater, Riviera Theater, State Theater, [fol. 93] Cameo Theater, Lake Theater, Rochester, N. Y.; Andrews Theater, Salamanca, N. Y.; Arcade Theater, Salisbury, Md.; Pontiac Theater, Saranac Lake, N. Y., Strand Theater, Seneca Falls, N. Y.; Castamba Theater, Shelby, Ohio; Eckel Theater, Paramount Theater, Keith Theater, Strand Theater, Syracuse, N. Y.; Tiffin Theater, Ritz Theater, Grand Theater, Tiffin, Ohio; State Theater, Tupper Lake, N. Y.; Strand Theater, Van Wert Theater, Ohio Theater, Van Wert, Ohio; Avon Theater, Olympic Theater, Palace Theater, Watertown, N. Y.; Capitol Theater, Whitehall, N. Y.; Wooster Theater, Opera House Theater, Wayne Theater, Wooster, O.

24

In response to paragraph XV.B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the motion picture theatres that the Schine defendants have attempted to acquire as alleged in paragraph 49(a) of the complaint are the Capitol Theater, Auburn, N. Y.; Palace Theater, Lancaster, Ohio; Memorial Theater, Mount Vernon, Ohio; and State Theater, Shelby, Ohio.

25

In response to paragraph XV.C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competitors that the Schine defendants have

forced out of business as alleged in said paragraph, include John Buchman, Delaware, Ohio.

26

In response to paragraph XV.D of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competitors that the Schine defendants have [fol. 94] attempted to force out of business as alleged in said paragraph, include Hubert P. Wallace, Auburn, N. Y.; Reliance Theatres, Inc., Lockport, N. Y.; Emerson W. Long, Mount Vernon, Ohio, Carl Brinton Moore, Van Wert, Ohio.

27

With respect to the allegations contained in paragraph 49(a) of the complaint, the plaintiff has heretofore filed particulars in response to paragraph XV.F of the defendants' specification of demands for a bill of particulars.

28

The plaintiff has likewise filed particulars in response to paragraph XV.G of the defendants' specification of demands for a bill of particulars.

29

For further and better particulars of the allegations contained in paragraph 49(a) (1) of the complaint, and in response to paragraph XVI.A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances in which it is claimed that the Schine defendants threatened to build a theater in opposition to another exhibitor, relate to Leo Kessel, Lancaster, Ohio; and Emerson W. Long, Mount Vernon, Ohio.

30

In response to paragraph XVI.B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theaters that the Schine defendants have acquired for many years past are as follows: Regent Theater, Rialto, Theater, Strand Theater, Amsterdam, N. Y.; Opera House Theater, Palace Theater, Ashland, Ohio; [fol. 95] Athens Theater, Court Theater, Ohio Theater, Athens, Ohio; Jefferson Theater, Palace Theater, Strand

Theater, Auburn Theater, Auburn, N Y.; Capitol Theater, Ballston, N. Y.; Babcock Theater, Ba n, N. Y.; Court Theater, Holland Theater, Strand Theater, Bellefontaine, Ohio; Southern Theater, State Theater, Ohio Theater, Bucyrus Theater, Bucyrus, Ohio; Granada Theater, Jubilee Theater, Riverside Theater, Buffalo, N. Y.; Arcade Theater, Grand Opera Theater, Cambridge, Md.; Playhouse Theater, Canandaigua, N. Y.; Strand Theater, Carthage, N. Y.; Hippodrome Theater, Kentucky Theater, Corbin, Ky.; Fox State Theater, New Fox Theater, Palace Theater, Corning, N. Y.; Cortland Theater, State Theater, Temple Theater, Cortland, N. Y.; Star Theater, Strand Theater, Delaware, Ohio; Strand Theater, Dolgeville, N. Y.; Music Hall Theater, Avalon Theater, Easton, Md.; Rialto Theater, East Rochester, N. Y.; Temple Theater, Fairport, N. Y.; Roxy Theater, Civic Theater, State Theater, Fostoria, Ohio; Regent Theater, Temple Theater, Geneva Theater, Geneva, N. Y., Empire Theater, Rialto Theater, Glens Falls, N. Y.; Glove Theater, Hippodrome Theater, Gloversville, N. Y.; State Theater, Hamilton, N. Y.; Liberty Theater, Herkimer, N. Y.; Strand Theater, Hudson Falls, N. Y.; Hurlock Theater, Hurlock, Md.; Capitol Theater, Opera House Theater, Illion, N. Y.; New Kent Theater, Opera House, Theater, Kent, Ohio; Palace Theater, Lake Placid, N. Y.; New Waller Theater, Laurel, Del.; Ben Ali Theater, Kentucky Theater, Strand Theater, State Theater, Lexington, Ky.; Rialto Theater, Hippodrome Theater, Little Falls, N. Y.; Hi-Art Theater, Palace Theater, Rialto Theater, Lockport, N. Y.; Plaza Theater, Malone Theater, Malone, N. Y.; Russel Theater, Maysville, Ky.; Princess Theater, Medina, Ohio; Massena Theater, Massena, N. Y.; Plaza Theater, Milford, [fol. 96] Del.; Lyric Theater, Vine Theater, Ohio Theater, Vernon Theater, Mt. Vernon, Ohio; Capitol Theater, Newark, N. Y.; Moose Theater, Forum Theater, Norwalk, Ohio; Colonial Theater, Smalley Theater, Norwick, N. Y.; Star Theater, Strand Theater, Pontiac Theater, Ogdensburg, N. Y.; Oneonta Theater, Palace Theater, Strand Theater, Oneonta, N. Y.; Capitol Theater, Richardson Theater, Strand Theater, State Theater, Oswego, N. Y.; Bourbon Theater, Paris, Ky.; Elmwood Theater, Penn Yan, N. Y.; Auditorium Theater, Perry, N. Y.; Ohio Theater, Piqua Theater, Miami Theater, Piqua, Ohio; Ravenna Theater, Ravenna, Ohio; Madison Theater, State Theater, Richmond, Ky.; Dixie Theater, Grand Theater, Liberty Theater, Ri-

viera Theater, State Theater, Cameo Theater, Lake Theater, Rochester, N. Y.; Andrews Theater, Salamanca, N. Y.; Arcade Theater, Salisbury, Md.; Pontiac Theater, Saranac Lake, N. Y.; Strand Theater, Seneca Falls, N. Y.; Castamba Theater, Shelby, Ohio; Eckel Theater, Paramount Theater, Keith Theater, Strand Theater, Syracuse, N. Y.; Tiffin Theater, Ritz Theater, Grand Theater, Tiffin, Ohio; State Theater, Tupper Lake, N. Y.; Strand Theater, Van Wert Theater, Ohio Theater, Van Wert, Ohio; Avon Theater, Olympic Theater, Palace Theater, Watertown, N. Y.; Capitol Theater, Whitehall, N. Y.; Wooster Theater, Opera House Theater, Wayne Theater, Wooster, Ohio.

31

For further and better particulars of the allegations contained in paragraph 49(a) (2) of the complaint, and in response to paragraph XVII. of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theatres which it is claimed that the Schine defendants constructed in opposition to another exhibitor, include [fol. 97] the Auburn Theater, Auburn, N. Y.; Riverside Theater, Buffalo, N. Y.; Vernon Theater, Mount Vernon, Ohio; Van Wert Theater, Van Wert, O.

For further and better particulars of the allegations contained in paragraph 49(a) (4) of the complaint, and in response to paragraph XIX. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the exhibitors other than the Schine defendants who have been deprived of desirable product or runs, and the periods of such deprivations, are as follows:

Theater	Exhibitor	Period of Deprivation
Capitol Theater, Auburn, N. Y.	Hubert P. Wallace	Oct. 1, 1934 to date
Star Theater, Delaware, O.	John Buchman	On or about July 1, 1936 to March 29, 1938
Palace Theater, Lockport, N. Y.	Reliance Theaters, Inc.	Oct. 21, 1933 to 1936
Memorial Theater, Mount Vernon, O.	Emerson W. Long	Dec. 31, 1934 to July 1935
Moose Theater, Norwalk, O.	Joseph H. Felter	July 1935 to Oct. 1936
Ohio Theater, Van Wert, O.	Carl B. Moore	Aug. 1935 to date

33

For further and better particulars of the allegations contained in paragraph 49(a) (5) of the complaint, and in response to paragraph XX. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants announced the proposed construction and opening of a theater in the neighborhood of another exhibitor at Lancaster, O., and Mount Vernon, O.

[fol. 98]

34

In response to paragraph XX. B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants took an interest in a theater site in the neighborhood of another exhibitor at Malone, N. Y., and that the nature of such interest was an option to purchase real property.

35

In response of paragraph XX. C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances referred to in response to paragraphs XX.A and XX. B of the defendants' specification of demands, relating to theaters in the neighborhood of which such construction or opening was announced, or such interest acquired, by the Schine defendants, are of the names and locations and are operated by the exhibitors indicated below:

Theater	Location	Exhibitor
Palace Theater	Lancaster, Ohio	Leo Kessel
Memorial Theater	Mount Vernon, Ohio	Emerson W. Long
Plaza Theater	Malone, New York	Michael Boumansour

36

For further and better particulars of the allegations contained in paragraph 49(a) (6) of the complaint, and in response to paragraph XXI of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants, or some of them, acquired superior title in a theater controlled and operated by another exhibitor, and took over the control and operation of such theater in the instance of the Seneca Theater, theretofore operated by Richard DeToto.

[fol. 99] 37

For further and better particulars of the allegations contained in paragraph 49(a) (9) of the complaint, and in response to paragraph XXIV of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants took unreasonable protection over other exhibitors in the instances of the following theaters: American Theater, Canton, N. Y.; Playhouse Theater, Clyde, N. Y.; Avalon Theater, Lowville, N. Y.

38

With respect to the allegations contained in paragraph 49(b) of the complaint, the plaintiff has heretofore filed particulars in response to paragraph XXV of the defendants' specification of demands for a bill of particulars.

39

For further and better particulars of the allegations contained in paragraph 49(b) (1) of the complaint, and in response to paragraph XXVI. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the situations in which it is claimed that the Schine defendants monopolized the first and preferred runs of all the high-class feature pictures distributed by the distributor defendants are as follows: Ogdensburg, N. Y.; Newark, N. Y.; Delaware, Ohio; Hudson Falls, N. Y.; Lockport, N. Y.; Carthage, N. Y.; Malone, N. Y.; Mount Vernon, Ohio; Norwalk, Ohio; Norwich, N. Y.; Van Wert, Ohio.

40

In response to paragraph XXVI. B of the defendants' specification of demands for a bill of particulars, the plaintiff states that at the present time it has no precise knowledge of the situations in which the Schine defendants mo- [fol. 100] nopolized the first and preferred runs of the most desirable feature pictures distributed by indipendent exhibitors.

41

For further and better particulars of the allegations contained in paragraph 49(b) (3) of the complaint, and in response to paragraph XXVIII. A of the defendants' specification of demands for a bill of particulars, the plaintiff

states that the Schine defendants have demanded and received unreasonable protection over other exhibitors at Canton, N. Y.; Clyde, N. Y., and Lowville, N. Y.

42

With respect to the allegations contained in paragraph 49(b) (4) of the complaint, the plaintiff has heretofore filed particulars in response to paragraph XXIX of the defendants' specification of demands for a bill of particulars.

43

The plaintiff has likewise filed particulars in response to paragraph XXXII.A of the defendants' specification of demands for a bill of particulars.

44

The plaintiff has likewise filed particulars in response to paragraph XXXII. B of the defendants' specification of demands for a bill of particulars.

45

For further and better particulars of the allegations contained in paragraph 49(c) (1) of the complaint, and in response to paragraph XXXIII. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theaters [fol. 101] which it is claimed that the Schine defendants kept closed, as alleged in said paragraphs are the Strand Theater, Seneca Falls, N. Y.; and the Lyric Theater, Mount Vernon, Ohio.

46

For further and better particulars of the allegations contained in paragraph 49(c)(2) of the complaint, and in response to paragraph XXXIV. A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants kept the site of the Temple Theater in Geneva, N. Y., as alleged in paragraph 49(c) of the complaint.

47

For further and better particulars of the allegations contained in paragraph 49(c) (4) of the complaint, and in

response to paragraph XXXXV. D of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that there was an indication that another exhibitor intended to open a theater in Geneva, N. Y., a Schine town, as alleged in said paragraph of the complaint, and that such other exhibitor was Louis Dipillo.

48

For further and better particulars of the allegations contained in paragraph 49(c)(5) of the complaint, and in response to paragraph XXXVI. A of the defendants' specifications of demands for a bill of particulars, the plaintiff states that the Schine defendants interfered with arrangements, financial, real estate, contractual, or otherwise, between other exhibitors and third parties for the acquisition of theater sites, or the acquisition, construction or operation of theaters at Mount Vernon, Ohio, and Seneca Falls, N. Y.

[fol. 102]

49

In response to paragraph XXXVI. G of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that another exhibitor was prevented from acquiring a theater or theater site by reason of such alleged interference.

50

In response to paragraph XXXVI. H of the defendants' specification of demands for a bill of particulars, the plaintiff states that the name of such exhibitor is Richard DeToto.

51

For further and better particulars of the allegations contained in paragraph 50 of the complaint, and in response to paragraph XXXVII of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names of the exhibitors claimed to have been systematically excluded from the opportunity of procuring high-class pictures under fair competitive conditions on first or preferred runs, and the locations of the theaters operated by such exhibitors are respectively as follows:

Exhibitor	Location
Irving Cohen and J. Morris Gaby	Corning, N. Y.
John Buchman	Delaware, O.
N. K. Smith	Glens Falls, N. Y.
Reliance Theaters, Inc.	Lockport, N. Y.
Michael Boumansour	Malone, N. Y.
Emerson W. Long	Mount Vernon, O.
Joseph H. Felter	Norwalk, O.
William C. Smalley	Norwich, N. Y.
Carl B. Moore	Van Wert, O.

[fol. 103]

52

For further and better particulars of the allegations contained in paragraph 51 of the complaint, and in response to paragraph XXXVIII of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names of the exhibitors claimed to have been systematically relegated to a secondary, inferior position where they have obtained motion pictures only on second or subsequent runs, are as follows:

Exhibitor	Location
Irving Cohen and J. Morris Gaby	Corning, N. Y.
John Buchman	Delaware, O.
N. K. Smith	Glens Falls, N. Y.
Reliance Theatres, Inc.	Lockport, N. Y.
Michael Boumansour	Malone, N. Y.
Emerson W. Long	Mount Vernon, O.
Joseph H. Felter	Norwalk, O.
William C. Stanley	Norwich, N. Y.
Carl B. Moore	Van Wert, O.

53

For further and better particulars of the allegations contained in paragraph 52 of the complaint. and in response to paragraph XXXIX of the defendant. specification of demands for a bill of particulars, the plaintiff states that the exhibitors claimed to have been forced out of business or compelled to dispose of their theaters are as follows: John Bahas, Ashland, O.; John Buchman, Delaware, O.;

Reliance Theatres, Inc., Lockport, N. Y.; Joseph H. Felter, Norwalk, O.

54.

In response to paragraph XXXIX: B of the defendants' specification of demands for a bill of particulars, the plain- [fol. 104] tiff states that the other exhibitors competing with the Schine defendants claimed to have been compelled to sustain losses or reduced revenue from the operation of their theaters are Clark Amusement Company, Fort Covington, N. Y., and William C. Smalley, Johnstown, N. Y.

55

For further and better particulars of the allegations contained in paragraph 54 of the complaint, and in response to paragraph XLI of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the individuals who have been denied the right of engaging in the business of exhibiting motion pictures in the Schine towns or any of them on a fair competitive basis, and the Schine towns referred to are as follows:

Individual	Location and Schine Town
Hubert P. Wallace	Auburn, N. Y.
Sidney J. Cohen	Buffalo, N. Y.
J. Morris Gaby	Corning, N. Y.
Frederick Gerber	Corning, N. Y.
John Buchman	Delaware, O.
Louis Dipillo	Geneva, N. Y.
Richard DeToto	Geneva, N. Y.
Michael Boumansour	Malone, N. Y.
Emerson W. Long	Mount Vernon, O.
Joseph K. Felter	Norwalk, O.
Ralph T. Kemper	Shelby, O.
Carl B. Moore	Van Wert, O.

56

The plaintiff has incomplete knowledge and information as to each of the items contained in this bill of particulars, [fol. 105] and hereby reserves its right to furnish further

particulars after it has obtained further knowledge and information.

Dated July 8th, 1940.

United States of America, by George L. Grobe, United States Attorney.

Herbert Borkland, Special Assistant to the Attorney General. Thorold Deyrup, Special Attorney.

[fol. 106] In the District Court of the United States

[Title omitted]

Bill of Particulars

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and for further and better particulars of certain of the allegations contained in the complaint, and in accordance with the order of this Court entered September 16, 1940, the plaintiff serves this [fol. 107] bill of particulars upon the defendant Columbia Pictures Corporation.

1

The names and locations of the first run theatres in each of the cities and towns in which it is claimed that a Schine defendant operates or controls a theatre or theatres are respectively as follows:

Theatre	*Location*
Auburn	Auburn, N. Y.
Palace; Opera House	Ashland, Ohio
Capitol	Ballston Spa, N. Y.
Babcock	Bath, N. Y.
Playhouse	Canandaigua, N. Y.
Strand	Carthage, N. Y.
Hippodrome	Corbin, Ky.
Strand	Delaware, Ohio
Strand	Geneva, N. Y.
Paramount; Rialto	Glens Falls, N. Y.
Liberty	Herkimer, N. Y.
Rialto	Little Falls, N. Y.

Theatre	*Location*
Rialto	Lockport, N. Y.
Malone	Malone, N. Y.
Plaza	Milford, Delaware
Vine	Mt. Vernon, Ohio
Capitol	Newark, N. Y.
Forum	Norwalk, Ohio
Colonial	Norwich, N. Y.
Bourbon	Paris, Ky.
Elmwood	Penn Yan, N. Y.
Auditorium	Perry, N. Y.
Ravenna	Ravenna, Ohio
Madison	Richmond, Ky.
Andrews	Salamanca, N. Y.
Pontiac	Saranac Lake, N. Y.
[fol. 108]	
Strand	Seneca Falls, N. Y.
Castamba; State	Shelby, Ohio
State	Tupper Lake, N. Y.
Van Wert	Van Wert, Ohio
Avon; Palace; Olympic	Watertown, N. Y.
Capitol	Whitehall, N. Y.

2

The plaintiff is unable at the present time to identify the distributors referred to by the phrase, "other distributors who are not defendants herein."

3

(a) The plaintiff is unable at the present time to state the exact period of time during which the plaintiff claims the Sherman antitrust law has been violated by any act done or omitted to be done by the defendant Columbia Pictures Corporation.

(b) The plaintiff does not claim that the defendants have monopolized, attempted to monopolize, combined or conspired to monopolize, or contracted, conspired or combined to restrain interstate trade and commerce in the distribution and exhibition of pictures in violation of the provisions of the Sherman antitrust act by any means or instrumentalities other than as alleged in paragraphs 46, 47, 48 and 49 of the complaint.

4

The situations referred to by the phrase, "practically all situations" contained in paragraph 46 of the complaint are as follows:

Amsterdam, N. Y.; Ashland, Ohio; Athens, Ohio; Auburn, N. Y.; Bath, N. Y.; Bellefontaine, Ohio; Bucyrus, Ohio; Buffalo, N. Y.; Cambridge, Md.; [fol. 109] Canandaigua, N. Y.; Carthage, N. Y.; Corbin, Ky.; Corning, N. Y.; Cortland, N. Y.; Delaware, Ohio; Dolgeville, N. Y.; Easton, Md.; Fostoria, Ohio; Geneva, N. Y.; Glens Falls, N. Y.; Hamilton, N. Y.; Herkimer, N. Y.; Hudson Falls, N. Y.; Hurlock, Md.; Illion, N. Y.; Kent, Ohio; Lake Placid, N. Y.; Laurel, Del.; Lexington, Ky.; Little Falls, N. Y.; Lockport, N. Y.; Malone, N. Y.; Massena, N. Y.; Maysville, Ky.; Medina, Ohio; Milford, Del.; Mt. Vernon, Ohio; Newark, N. Y.; Norwalk, Ohio; Norwich, N. Y.; Ogdensburg, N. Y.; Oneonta, N. Y.; Oswego, N. Y.; Paris, Ky.; Penn Yan, N. Y.; Perry, N. Y.; Piqua, Ohio; Ravenna, Ohio; Richmond, Ky.; Rochester, N. Y.; Salamanca, N. Y.; Salisbury, Md.; Saranac Lake, N. Y.; Seneca Falls, N. Y.; Shelby, Ohio; Syracuse, N. Y.; Tiffin, Ohio; Tupper Lake, N. Y.; Van Wert, Ohio; Watertown, N. Y.; Whitehall, N. Y.; Wooster, Ohio.

5

(a) The names and locations of the theatres to which grants of preference or protection were made by each distributer defendant as alleged in paragraph 46 (a) of the complaint are as follows:

Theatre	*Location*
Strand Theatre	Ogdensburg, N. Y.
Capitol Theatre	Newark, N. Y.
Strand Theatre	Delaware, Ohio
Strand Theatre	Hudson Falls, N. Y.
Rialto Theatre	Lockport, N. Y.
Strand Theatre	Carthage, N. Y.
Malone Theatre	Malone, N. Y.
Vine Theatre	Mt. Vernon, Ohio
Forum Theatre	Norwalk, Ohio.
Colonial Theatre	Norwich, N. Y.
Van Wert Theatre	Van Wert, Ohio.

[fol. 110] (b) The names and locations of theatres acquired by Schine defendants which, after such acquisition, have been granted priority and preference over competing theatres by the distributer defendants and the distributer defendants granting such preference and protection are as follows:

Theatre	Location	Preference and Protection Granted By
Strand Theatre	Ogdensburg, N. Y.	All distributor defendants
Capitol Theatre	Newark, N. Y.	All distributor defendants
Strand Theatre	Delaware, Ohio	Paramount and United Artists
Strand Theatre	Hudson Falls, N. Y.	All distributor defendants
Strand Theatre	Carthage, N. Y.	All distributor defendants
Forum Theatre	Norwalk, Ohio	All distributor defendants
Colonial Theatre	Norwich, N. Y.	All distributor defendants
Van Wert Theatre	Van Wert, Ohio	All distributor defendants

(c) The names and locations of the competing theatres over which theatres acquired by the Schine defendants have been granted priority and preference are set forth below:

Theatre	*Location*
Star Theatre	Delaware, Ohio
Palace Theatre	Lockport, N. Y.
Plaza Theatre	Malone, N. Y.
Memorial Theatre	Mt. Vernon, Ohio
Moose Theatre	Norwalk, Ohio
Smalley Theatre	Norwich, N. Y.
Ohio Theatre	Van Wert, Ohio

[fol. 111] The distributer defendants granting such priority and preference are stated for the respective situations in the particulars of the allegations of paragraph 46 (a) of the complaint heretofore set forth.

6

The names and locations of the theatres which the defendant distributers have refused to license on a local com-

petitive basis are the Plaza Theatre, Malone, New York, and the Memorial Theatre, Mt. Vernon, Ohio.

7

(a) The plaintiff does not claim that the phrase "far greater privileges" includes privileges other than the "substantial rejection privileges" and the "right and privilege to play certain specified feature pictures without assuming any binding obligation to do so."

(b) The plaintiff is unable at the present time to identify each and every one of the "other benefits and advantages" which are claimed to have been granted by each of the distributer defendants to any of the Schine defendants and not as a general rule granted to other exhibitors.

8

(a) The instances comprehended by the phrase "in many instances" appearing in paragraph 46 (d) of the complaint include the following:

Theatre	*Location*
Palace Theatre	Lockport, N. Y.
Plaza Theatre	Malone, N. Y.
Memorial Theatre	Mt. Vernon, Ohio
Capitol Theatre	Auburn, N. Y.

(b) It is claimed that the refusal to sell a second or subsequent run picture to the Plaza Theatre, Malone, New [fol. 112] York, was made at the request of the Schine defendants. With respect to the other instances of refusal to sell a second or subsequent run picture in opposition to a theatre or theatres operated by the Schine defendants, the plaintiff is unable to state at this time whether or not such refusals were made at the request of the Schine defendants.

9

With respect to each instance where it is claimed that Columbia Pictures Corporation granted to the Schine defendants unreasonable protection over other theatres, the names and locations of the Schine theatres and the names

and locations of the theatres over which such unreasonable protection was granted are respectively as follows:

Schine Theatre	*Theatre Over Which Protection was granted*
Strand Theatre	American Theatre
Ogdensburg, N. Y.	Canton, N. Y.
Capitol Theatre	Playhouse
Newark, N. Y.	Clyde, N. Y.
Strand Theatre	Avalon Theatre
Carthage, N. Y.	Lowville, N. Y.

The names of the defendants operating each of the Schine theatres mentioned in this paragraph are at the present time unknown to the plaintiff.

10

(a) The approximate number of instances comprehended by the phrase "in many instances" appearing in paragraph 46 (f) of the complaint is four.

(b) The names and locations of the theatres operated by exhibitors claimed to have been charged more "for comparable or less favorable runs" than the Schine defendants are as follows:

[fol. 113]

Theatre	*Location*
Capitol Theatre	Auburn, N. Y.
Palace Theatre	Corning, N. Y.
Madison Theatre	Rochester, N. Y.
Monroe Theatre	Rochester, N. Y.

11

(a) The approximate number of occasions comprehended by the phrase "on many occasions" appearing in paragraph 46 (g) of the complaint is four.

(b) The names and addresses of the "other exhibitors" referred to in said paragraph who are claimed to have been prevented from using pictures or from obtaining them while they are still new are as follows:

Name	*Address*
Aleck P. Papayanakos	Canton, New York
Reliance Theatres, Inc.	Lockport, New York
Michael Boumansour	Malone, New York
Emerson W. Long	Mt. Vernon, Ohio.

(c) The extent to which the licensing of motion pictures to the Schine defendants prevented such other exhibitors from obtaining the same, and the manner in which such result was accomplished in the instances referred to in the preceding paragraph are as follows:

Exhibitor	Extent of Loss of Product	Manner in Which Such Result Was Accomplished
Aleck P. Papayanakos	Delay of 60 to 75 days in exhibition after first run.	Not known.

[fol. 114]

Reliance Theatres, Inc.	Not known.	By contract with the Schine defts.
Michael Baumansour	No product received.	By contract with the Schine defts.
Emerson W. Long	No product received.	Not known.

12

The names and locations of the theatres and the operators thereof which the plaintiff claims were affected by the uniform restraints imposed by the distributer defendants, as alleged in paragraph 47 of the complaint, are respectively as follows:

Theatre	Operator
Capitol Theatre, Auburn, N. Y.	Hubert P. Wallace
Ohio Theatre, Ashland, Ohio	John Bahas
Ohio Theatre, Athens, Ohio	Henry Bieberson
Columbia Theatre, Athens, Ohio	Henry Bieberson
Jubilee Theatre, Buffalo, New York	Jubilee Realty Company Schwartz & Cohen
American Theatre, Canton, New York	Aleck P. Papayanakos
Playhouse Theatre, Clyde, New York	Caroline Perriello
Plaza Theatre, Corning, New York	Morris J. Gaby
Liberty Theatre, Corning, N. Y.	Frederick Gerder
Star Theatre, Delaware, Ohio	John Buchmann
Seneca Theatre, Seneca Falls, N. Y.	Lucy Riccardillo
State Theatre, Glens Falls, N. Y.	N. K. Smith
Town Hall Theatre, Homer, N. Y.	Murray Brisken
Corona Theatre, Groton, N. Y.	Murray Brisken
State Theatre, Waterloo, N. Y.	Murray Brisken

[fol. 115]

Palace Theatre, Lockport, N. Y.	Reliance Theatres, Inc.
Avalon Theatre, Lowville, N. Y.	Ernest J. Wolfe
Ohmann Theatre, Lyons, N. Y.	Burt Ohmann

Theatre	Operator
Plaza Theatre, Malone, N. Y.	Michael Boumansour
Memorial Theatre, Mt. Vernon, N. Y.	Emerson W. Long
Crescent Theatre, Newark, N. Y.	W. G. Croucher
Star Theatre, Northville, N. Y.	C. H. Dopp
Strand Theatre, Johnstown, N. Y.	C. H. Dopp
Hollywood Theatre, Frankfort, N. Y.	C. H. Dopp
Poland Theatre, Poland, N. Y.	C. H. Dopp
Moose Theatre, Norwalk, Ohio	Joseph Felter
Elmwood Theatre, Penn Yan, N. Y.	Mrs. Harry C. Morse
Madison Theatre, Rochester, N. Y.	Fenyvessy Enterprises
Monroe Theatre, Rochester, N. Y.	Fenyvessy Enterprises
State Theatre, Shelby, Ohio	Ralph T. Kemper
Ohio Theatre, Van Wert, Ohio	Carl Brinton Moore
Strand Theatre, Waterloo, N. Y.	Peter C. Vournakis
Liberty Theatre, Waterloo, N. Y.	Peter C. Vournakis

In the case of each of the theatres mentioned, the manner in which such theatre was affected was through financial loss.

13

(a) The towns embraced within the term "closed towns" include the following: Ashland, Ohio; Athens, Ohio; Ballston, New York; Bath, N. Y.; Bellefontaine, Ohio; Bucyrus, Ohio; Cambridge, Md.; Canadaigua, N. Y.; Carthage, N. Y.; Corbin, Ky.; Cortland, N. Y.; Easton, Md.; Fostoria, Ohio; Geneva, N. Y.; Gloversville, N. Y.; Hudson Falls, N. Y.; Hurlock, Md.; Illion, N. Y.; Kent, Ohio; Laurel, Del.; Little Falls, N. Y.; Lockport, N. Y.; Milford, Del.; Mount Vernon, Ohio; Newark, N. Y.; Norwalk, Ohio; Norwich, N. Y.; Ogdensburg, N. Y.; Oneonta, N. Y.; [fol. 116] Paris, Ky.; Penn Yan, N. Y.; Perry, N. Y.; Ravenna, Ohio; Richmond, Ky.; Salamanca, N. Y.; Saranac Lake, N. Y.; Seneca Falls, N. Y.; Tiffin, Ohio.

(b) The names and locations of the towns in which the plaintiff claims that the Schine defendants maintained a local monpoly are the same as those indicated under paragraph 13(a) of this bill of particulars.

(c) The names and locations of the competing theatres are as follows:

Theatre	*Location*
Orpheum Theatre	Amsterdam, New York
Capitol Theatre	Auburn, New York
Jubilee Theatre	Buffalo, New York

Theatre	*Location*
New Plaza Theatre	Corning, New York
Strand Theatre	Delaware, Ohio
Park Theatre State Theatre Paramount Theatre	Glens Falls, New York
Smalley's Theatre	Hamilton, New York
Ada Meade Theatre and Opera House Theatre	Lexington, Kentucky
Plaza Theatre	Malone, New York
Hollywood Theatre and Washington Theatre	Maysville, Kentucky
Medina Theatre	Medina, Ohio
Rialto Theatre	Massena, New York
Strand Theatre and Orpheum Theatre	Oswego, New York
Webster Theatre	Rochester, New York
Uhlmans Theatre New Theatre Wicomico Theatre	Salisbury, Maryland

[fol. 117]

Opera House Theatre Shelby Theatre State Theatre	Shelby, Ohio
Ohio Theatre	Van Wert, Ohio
Liberty Theatre Strand Theatre Victoria Theatre	Watertown, New York

(d) The names and locations of the towns in which the only theatre or theatres in operation are the theatres of the so-called Schine Circuit are those indicated under paragraph 13 (a) of this bill of particulars.

(e) The competing exhibitors referred to in paragraph 48 of the complaint include the following: Hubert P. Wallace, Auburn, New York; Sidney J. Cohen, Buffalo, New York; Michael Boumansour, Malone, New York; Ralph T. Kemper, Shelby, Ohio; Carl Brinton Moore, Van Wert, Ohio; Peter C. Vournakis, Watertown, New York.

14

(a) The motion picture theatres which the Schine defendants have acquired as alleged in paragraph 49 (a) of

the complaint are as follows: Regent Theatre, Rialto Theatre, Strand Theatre, Amsterdam, New York; Opera House Theatre, Palace Theatre, Ashland, Ohio; Athena Theatre, Court Theatre, Ohio Theatre, Athens, Ohio; Jefferson Theatre, Palace Theatre, Strand Theatre, Auburn Theatre, Auburn, New York; Capitol Theatre, Ballston, New York; Babcock Theatre, Bath, New York; Court Theatre, Holland Theatre, Bucyrus Theatre, Bucyrus, Ohio; Granada Theatre, Jubilee Theatre, Riverside Theatre, Buffalo, New York; Arcade Theatre, Grand Opera Theatre, Cambridge, Maryland; Playhouse Theatre, Canandaigua, New York; Strand Theatre, Carthage, New York; Hippodrome Theatre, Kentucky Theatre, Corbin, Kentucky; Fox State [fol. 118] Theatre, New Fox Theatre, Palace Theatre, Corning, New York; Cortland Theatre, State Theatre, Temple Theatre, Cortland, New York; Star Theatre, Strand Theatre, Delaware, Ohio; Strand Theatre, Dolgeville, New York; Music Hall Theatre, Avalon Theatre, Easton, Maryland; Rialto Theatre, East Rochester, New York; Temple Theatre, Fairport, New York; Roxy Theatre, Civic Theatre, State Theatre, Fostoria, Ohio; Regent Theatre, Temple Theatre, Geneva Theatre, Geneva, New York; Empire Theater, Rialto Theatre, Glens Falls, New York; Glove Theatre, Hippodrome Theatre, Gloversville, New York; State Theatre, Hamilton, New York; Liberty Theatre, Herkimer, New York; Strand Theatre, Hudson Falls, New York; Hurlock Theatre, Hurlock, Maryland; Capitol Theatre, Opera House Theatre, Illion, New York; New Kent Theatre, Opera House Theatre, Kent, Ohio; Palace Theatre, Lake Placid, New York; New Waller Theatre, Laurel, Delaware; Ben Ali Theatre, Kentucky Theatre, Strand Theatre, State Theatre, Lexington, Kentucky; Rialto Theatre, Hippodrome Theatre, Little Falls, New York; Hi-Art Theatre, Palace Theatre, Rialto Theatre, Lockport, New York; Plaza Theatre, Malone Theatre, Malone, New York; Russel Theatre, Maysville, Kentucky; Princess Theatre, Medina, Ohio; Massena Theatre, Massena, New York; Plaza Theatre, Milford, Delaware; Lyric Theatre, Vine Theatre, Ohio Theatre, Vernon Theatre, Mt. Vernon, Ohio; Capitol Theatre, Newark, New York; Moose Theatre, Forum Theatre, Norwalk, Ohio; Colonial Theatre, Smalley Theatre, Norwich, New York; Star Theatre, Strand Theatre, Pontiac Theatre, Ogdensburg, New York; Oneonta Theatre, Palace Theatre, Strand Theatre, Oneonta, New York; Capitol Theatre,

Richardson Theatre, Strand Theatre, State Theatre, Oswego, New York; Bourbon Theatre, Paris, Kentucky; Elmwood Theatre, Penn Yan, New York; Auditorium Theatre, Perry, New York; Ohio Theatre, Piqua Theatre, Miami [fol. 119] Theatre, Piqua, Ohio; Ravenna Theatre, Ravenna, Ohio; Madison Theatre, State Theatre, Richmond, Kentucky; Dixie Theatre, Grand Theatre, Liberty Theatre, Riviera Theatre, State Theatre, Cameo Theatre, Lake Theatre, Rochester, New York; Andrews Theatre, Salamanca, New York; Arcade Theatre, Salisbury, Maryland; Pontiac Theatre, Saranac Lake, New York; Strand Theatre, Seneca Falls, New York; Castamba Theatre, Shelby, Ohio; Eckel Theatre, Paramount Theatre, Keith Theatre, Strand Theatre, Syracuse, New York; Tiffin Theatre, Ritz Theatre, Grand Theatre, Tiffin, Ohio; State Theatre, Tupper Lake, New York; Strand Theatre, Van Wert Theatre, Ohio Theatre, Van Wert, Ohio; Avon Theatre, Olympic Theatre, Palace Theatre, Watertown, New York; Capitol Theatre, Whitehall, New York; Wooster Theatre, Opera House Theatre, Wayne Theatre, Wooster, Ohio.

(b) The theatres which the Schine defendants have attempted to acquire are: Capitol Theatre, Auburn, New York; Palace Theatre, Lancaster, Ohio; Memorial Theatre, Mount Vernon, Ohio; and State Theatre, Shelby, Ohio.

(c) The competitors whom the Schine defendants have forced out of business include John Buchmann, Delaware, Ohio.

(d) The competitors whom the Schine defendants have attempted to force out of business include Hubert P. Wallace, Auburn, New York; Reliance Theatres, Inc., Lockport, New York; Emerson W. Long, Mount Vernon, Ohio, and Carl Brinton Moore, Van Wert, Ohio.

(e) The plaintiff does not claim that any method other than those set forth in paragraph 49 (a), (1) to (9), inclusive, were used by the Schine defendants for the purpose of acquiring and attempting to acquire theatres and forcing and attempting to force competitors out of business.

[fol. 120] (f) It is claimed that the distributer defendants participated and assisted in doing the acts alleged in subparagraphs (1) to (8), inclusive, of paragraph 49 (a) of the complaint.

(a) The instances in which it is claimed that the Schine defendants threatened to build a theatre in opposition to another exhibitor as alleged in paragraph 49 (a), (1), relate to Leo Kessel, Lancaster, Ohio, and Emerson W. Long, Mount Vernon, Ohio.

(b) The motion picture theatres that the Schine defendants have acquired as alleged in said paragraph are as follows: Regent Theatre, Rialto Theatre, Strand Theatre, Amsterdam, New York; Opera House Theatre, Palace Theatre, Ashland, Ohio; Athens Theatre, Court Theatre, Ohio Theatre, Athens, Ohio; Jefferson Theatre, Palace Theatre, Strand Theatre, Auburn Theatre, Auburn, New York; Capitol Theatre, Ballston, New York; Babcock Theatre, Bath, New York; Court Theatre, Holland Theatre, Strand Theatre, Bellefontaine, Ohio; Southern Theatre, State Theatre, Ohio Theatre, Bucyrus Theatre, Bucyrus, Ohio; Granada Theatre, Jubilee Theatre, Riverside Theatre, Buffalo, New York; Arcade Theatre, Grand Opera Theatre, Cambridge, Maryland; Playhouse Theatre, Canandaigua, New York; Strand Theatre, Carthage, New York; Hippodrome Theatre, Kentucky Theatre, Corbin, Kentucky; Fox State Theatre, New Fox Theatre, Palace Theatre, Corning, New York; Cortland Theatre, State Theatre, Temple Theatre, Cortland, New York; Star Theatre, Strand Theatre, Delaware, Ohio; Strand Theatre, Dolgeville, New York; Music Hall Theatre, Avalon Theatre, Easton, Maryland; Rialto Theatre, East Rochester, New York; Temple Theatre, Fairport, New York; Roxy Theatre, Civic Theatre, State The-
[fol. 121] atre, Fost[illegible], Ohio; Regent Theatre, Temple Theatre, Geneva Theatre, Geneva, New York; Empire Theatre, Rialto Theatre, Glens Falls, New York; Glove Theatre, Hippodrome Theatre, Gloversville, New York; State Theatre, Hamilton, New York; Liberty Theatre, Herkimer, New York; Strand Theatre, Hudson Falls, New York; Hurlock Theatre, Hurlock, Maryland; Capitol Theatre, Opera House Theatre, Ilion, New York; New Kent Theatre, Opera House Theatre, Kent, Ohio; Palace Theatre, Lake Placid, New York; New Waller Theatre, Laurel, Delaware; Ben Ali Theatre, Kentucky Theatre, Strand Theatre, State Theatre, Lexington, Kentucky; Rialto Theatre, Hippodrome Theatre, Little Falls, New York; Hi-Art Theatre,

Palace Theatre, Rialto Theatre, Lockport, New York; Plaza Theatre, Malone Theatre, Malone, New York; Russell Theatre, Maysville, Kentucky; Princess Theatre, Medina, Ohio; Massena Theatre, Massena, New York; Plaza Theatre, Milford, Delaware; Lyric Theatre, Vine Theatre, Ohio Theatre, Vernon Theatre, Mt. Vernon, Ohio; Capitol Theatre, Newark, New York; Moose Theatre, Forum Theatre, Norwalk, Ohio; Colonial Theatre, Smalley Theatre, Norwich, New York; Star Theatre, Strand Theatre, Pontiac Theatre, Ogdensburg, New York; Oneonta Theatre, Palace Theatre, Strand Theatre, Oneonta, New York; Capitol Theatre Richardson Theatre, Strand Theatre, State Theatre, Oswego, New York; Bourbon Theatre, Paris, Kentucky; Elmwood Theatre, Penn Yan, New York; Auditorium Theatre, Perry, New York; Ohio Theatre, Piqua Theatre, Miami Theatre, Piqua, Ohio; Ravenna Theatre, Ravenna, Ohio; Madison Theatre, State Theatre, Richmond, Kentucky; Dixie Theatre, Grand Theatre, Liberty Theatre, Riviera Theatre, State Theatre, Cameo Theatre, Lake Theatre, Rochester, New York; Andrews Theatre, Salamanca, New York; Arcade Theatre, Salisbury, Maryland; Pontiac Theatre, Saranac Lake, New York; Strand Theatre, Seneca [fol. 122] Falls, New York; Castamba Theatre, Shelby, Ohio; Eckel Theatre, Paramount Theatre, Keith Theatre, Strand Theatre, Syracuse, New York; Tiffin Theatre, Ritz Theatre, Grand Theatre, Tiffin, Ohio; State Theatre, Tupper Lake, New York; Strand Theatre, Van Wert Theatre, Ohio Theatre, Van Wert, Ohio; Avon Theatre, Olympic Theatre, Palace Theatre, Watertown, New York; Capitol Theatre, Whitehall, New York; Wooster Theatre, Opera House Theatre, Wayne Theatre, Wooster, Ohio.

16

The theatres which the Schine defendants constructed as alleged in paragraph 49 (a), (2), of the complaint include the Auburn Theatre, Auburn, New York; Riverside Theatre, Buffalo, New York; Vernon Theatre, Mount Vernon, Ohio; Van Wert Theatre, Van Wert, Ohio.

17

The theatres and exhibitors deprived of desirable product or runs as alleged in paragraph 49 (a), (4), of the complaint, and the respective periods of deprivation are as follows:

Theatre	Exhibitor	Period of Deprivation
Capitol Theatre, Auburn, New York	Hubert P. Wallace	Oct. 1, 1934 to date
Star Theatre, Delaware, Ohio	John Buchmann	On or about July 1, 1936 to March 29, 1938
Palace Theatre, Lockport, New York	Reliance Theatres, Inc.	Oct. 21, 1933 to 1936
Memorial Theatre, Mt. Vernon, Ohio	Emerson W. Long	Dec. 31, 1934 to July, 1935
Moose Theatre, Norwalk, Ohio	Joseph H. Felter	July 1935 to Oct. 1936
Ohio Theatre, Van Wert, Ohio	Carl B. Moore	Aug. 1935 to date.

[fol. 123]

18

(a) The Schine defendants announced the proposed construction and opening of a theatre in the neighborhood of another exhibitor at Lancaster, Ohio, and at Mt. Vernon, Ohio.

(b) The Schine defendants took an interest in a theatre site in the neighborhood of another exhibitor at Malone, New York, and such interest was an option to purchase real property.

(c) The names and locations of the theatres in whose neighborhood the Schine defendants announced construction, or acquired an interest, are as follows:

Theatre	*Location*	*Exhibitor*
Palace Theatre	Lancaster, Ohio	Leo Kessel
Memorial Theatre	Mt. Vernon, Ohio	Emerson W. Long
Plaza Theatre	Malone, New York	Michael Boumansour.

19

The Schine defendants acquired superior title in the theatre operated by another exhibitor in the case of the Seneca Theatre theretofore operated by Richard DeTato.

20

Theatres operated by the Schine defendants took unreasonable protection over the following theatres: American Theatre, Canton, New York; Playhouse Theatre, Clyde, New York; Avalon Theatre, Lowville, New York.

21

(a) The plaintiff does not claim that any methods other than those set forth in paragraph 49 (b), (1) to (6), inclusive, were used by the Schine defendants for the purpose of restraining trade and monopolizing the exhibition of motion pictures in the Schine towns.

[fol. 124] (b) The plaintiff is unable to identify at the present time each Schine town in which it is claimed that the Schine defendants have restrained trade and monopolized the exhibition of motion pictures.

22

(a) The Schine defendants monopolized the first and preferred runs of all the "high class" feature pictures distributed by the distributor defendants in the following towns: Ogdensburg, New York; Newark, New York; Delaware, Ohio; Hudson Falls, New York; Lockport, New York; Carthage, New York; Malone, New York; Mount Vernon, Ohio; Norwalk, Ohio; Norwich, New York; Van Wert, Ohio.

(b) The plaintiff is unable to identify at the present time each situation in which it is claimed that the Schine defendants monopolized the first and preferred runs of the most desirable feature pictures distributed by independent distributors.

23

The Schine defendants have demanded and received unreasonable protection over other exhibitors in Canton, New York, Clyde, New York and Lowville, New York.

24

(a) The phrase "more favorable rental terms" as used in paragraph 49 (b), (4), of the complaint is not intended to apply only to the price paid for pictures.

(b) The phrase "more favorable rental terms" is intended to apply not only to the price paid for pictures, but also to the price paid for the news reels and short subjects distributed by the distributer whose pictures are involved, and also to the score charges paid on such pictures.

25

The plaintiff is unable to state at the present time the nature of each claim, privilege or advantage referred to in [fol. 125] paragraph 49 (b), (6), of the complaint, the granting of which by Columbia was induced through entertainment, gifts and favors tendered to the representatives of the defendant, Columbia.

26

(a) A practice engaged in by the Schine defendants, other than those set forth in paragraph 49 (c), (1) to (5), inclusive, in order to maintain and perpetuate a monopoly and actively to discourage competition in the Schine town, is the taking over of theatres by the Schine defendants for the purpose of closing them, demolishing them, or otherwise eliminating their competition as motion picture theatres.

(b) It is claimed that the distributor defendants participated in and assisted the Schine defendants in doing the acts alleged in subparagraphs (1), (2) and (5) of paragraph 49 (c) of the complaint.

27

The theatres which it is claimed that the Schine defendants kept closed as alleged in paragraph 49 (c), (1), of the complaint are the Strand Theatre, Seneca Falls, New York, and the Lyric Theatre, Mount Vernon, Ohio.

28

The theatre sites or interests kept or acquired by the Schine defendants as alleged in paragraph 49 (c), (2), of the complaint include the site of the Temple Theatre, Geneva, New York.

29

There was an indication that another exhibitor intended to operate a theatre in Geneva, New York, a Schine town,

as alleged in paragraph 49 (c), (4), of the complaint and such exhibitor was Louis Dipillo.

[fol. 126] 30

(a) The Schine defendants interferred with arrangements, financial, real estate, contractual or otherwise between other exhibitors and third parties in Mount Vernon, Ohio, and Seneca Falls, New York.

(b) It is claimed that other exhibitors were prevented from acquiring a theatre or theatres by reason of such interference.

(c) The exhibitors include Richard DeToto.

31

(a) The exhibitors claimed to have been excluded from the opportunity to procure pictures as alleged in paragraph 50 of the complaint are as follows:

Irving Cohen and J. Morris Gaby, Corning, New York; John Buchmann, Delaware, Ohio; N. K. Smith, Glens Falls, New York; Reliance Theatres, Inc., Lockport, New York; Michael Boumansour, Malone, New York; Emerson W. Long, Mount Vernon, Ohio; Joseph H. Felter, Norwalk, Ohio; William C. Smalley, Norwich, New York; Carl B. Moore, Van Wert, Ohio.

(b) The names and the locations of the theatres operated by such exhibitors are:

Plaza Theatre, Corning, New York; Star Theatre, Delaware, Ohio; State Theatre, Glens Falls, New York; Palace Theatre, Lockport, New York; Plaza Theatre, Malone, New York; Memorial Theatre, Mt. Vernon, Ohio; Smalley's Theatre, Norwich, New York, and the Ohio Theatre, Van Wert, Ohio.

32

The exhibitors claimed to have been relegated to a secondary or inferior position as alleged in paragraph 51 of the [fol. 127] complaint are as follows: Irving Cohen and J. Morris Gaby; John Buchmann; N. K. Smith; Reliance Theatres, Inc.; Michael Boumansour; Emerson W. Long; Joseph H. Felter; William C. Smalley and Carl B. Moore.

33

(a) The exhibitors claimed to have been forced out of business include the following; John Bahas, Ashland, Ohio; John Buchmann, Delaware, Ohio; Reliance Theatres, Inc., Lockport, New York; Joseph H. Felter, Norwalk, Ohio.

(b) The exhibitors claimed to have sustained losses of reduced revenue are as follows: Clark Amusement Company, Fort Covington, New York, and William C. Smalley, Johnstown, New York.

34

The names and locations of the individuals claimed to have been denied the right of engaging in the business of exhibiting motion pictures as alleged in paragraph 54 of the complaint are as follows:

Individual	*Location and Schine Town*
Hubert P. Wallace	Auburn, New York
Sidney J. Cohen	Buffalo, New York
J. Morris Gaby	Corning, New York
Frederick Gerber	Corning, New York
John Buchmann	Delaware, Ohio
Louis Dipillo	Geneva, New York
Richard DeToto	Geneva, New York
Michael Boumansour	Malone, New York
Emerson W. Long	Mt. Vernon, Ohio
Joseph Felter	Norwalk, Ohio
Ralph T. Kemper	Shelby, Ohio
Carl B. Moore	Van Wert, Ohio.

[fol. 128]

35

The plaintiff has incomplete knowledge and information as to each of the items contained in this bill of particulars, and hereby reserves its right to furnish further particulars after it has obtained further knowledge and information.

Dated October 1, 1940.

United States of America, George L. Grobe, United States Attorney.

Herbert Borkland, Special Assistant to the Attorney General; Thorold Deyrup, Special Attorney.

[fol. 129] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

BILL OF PARTICULARS WITH RESPECT TO AMENDED COMPLAINT

The United States of America, petitioner herein, files the following bill of particulars with respect to the amended complaint in response to the motion of the defendants Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine, and John A. May, in accordance with the order of the Court heretofore entered:

1

For further and better particulars of the allegations of paragraph 42 of the amended complaint plaintiff states:

A. That it will claim that the defendant distributors released approximately 15 per cent of all "first-class" feature pictures during each of the past 10 years;

B. That it will claim that the non-defendant distributors released approximately 80 per cent of all "first-class" feature pictures during each of the past ten years.

[fol. 130] 2

For further and better particulars of the allegations of paragraph 43 of the amended complaint, plaintiff states:

A. That it will claim that the distributor defendants distributed the following approximate percentages of all "feature" pictures distributed during each of the past ten years:

1929-30	between 12 and 22%
1930-31	12%
1931-32	16%
1932-33	16%
1933-34	21%
1934-35	19%
1935-36	15%
1936-37	18%
1937-38	22%
1938-39	22%

B. That it will claim that the "non-defendant distributors" distributed the following approximate percentages of all "feature" pictures distributed during each of the past 10 years:

1929-30	50%
1930-31	50%
1931-32	50%
1932-33	45%
1933-34	52%
1934-35	42%
1935-36	51%
1936-37	43%
1937-38	50%
1938-39	51%

3

For further and better particulars of the allegations of conspiracies and combinations and contracts between the [fol. 131] "Schine defendants" and the "defendant" distributors and "non-defendant" distributors contained in paragraphs 45 and 46 of the amended complaint, plaintiff states:

A. As to each such conspiracy, combination or contract, it claims the existence of a separate and distinct conspiracy, combination or contract between each of the eight major distributors, whether "defendants" or "non-defendants", acting separately, and the "Schine defendants";

B. It claims that each such conspiracy, combination or contract is still in existence, except insofar as the illegal contracts alleged in paragraphs 45 and 46 consist of licensing agreements alone, in which case, said contracts ceased upon their completion.

Dated at Buffalo, New York.
September 4, 1941.

George L. Grobe, United States Attorney for the Western District of New York, Solicitor for Petitioner.

Herbert Borkland, Special Assistant to the Attorney General; Seymour Simon, Special Attorney.

[fol. 132] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SUPPLEMENTAL BILL OF PARTICULARS

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and for further and better particulars of certain of the allegations of the complaint with respect to which it has heretofore filed further particulars, states as follows:[1]

3

For further and better particulars of the allegations contained in paragraph 46 of the complaint, and in response to paragraph IV C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the situation referred to by the phrase "practically all situations" in paragraph 46 of the complaint are as follows:

[fol. 133] *New York*

Amsterdam
Auburn
Ballston Spa
Bath
Canandaigua
Carthage
Clifton Springs
Corning
Cortland
Dolgeville
East Rochester
Fairport
Geneva
Glens Falls
Gloversville
Granville
Hamilton
Herkimer
Hudson Falls
Ilion
Little Falls
Lockport
Malone
Massena
Mechanicsville

[1] These particulars replace the particulars contained in the following numbered paragraphs of the particulars filed by the plaintiff on August 8, 1940, in response to certain of the defendants' specification of demands for a bill of particulars: 3, 4, 5, 6, 7, 9, 10, 11, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 45, 46, 47, 51, 53, 54, and 55. Each paragraph is here numbered the same as the corresponding paragraph in the plaintiff's bill of particulars of August 8, 1940, which it replaces.

New York (Cont.)
Newark
Norwich
Ogdensburg
Oneonta
Oswego
Penn Yan
Perry
Rochester
Salamanca
Saranac Lake
Seneca Falls
Syracuse
Tupper Lake
Utica
Watertown
Whitehall

Ohio
Ashland
Athens
Bellefontaine
Bowling Green
Bucyrus
Delaware
Fostoria
Fremont
Kent
Medina
Mt. Vernon
Norwalk
Piqua
Ravenna
Shelby
Tiffin
Van Wert
Wooster

Kentucky
Corbin
Harlan
Lexington
Maysville
Middlesboro
Paris
Pikeville
Richmond

[fol. 133a]

Maryland
Cambridge
Easton
Federalsburg
Hurlock
Salisbury
St. Michaels

Delaware
Laurel
Milford

4

For further and better particulars of the allegations contained in paragraph 46(a) of the complaint, and in response to paragraph V A (1) of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theatres to which preference or protection was granted by the distributor defendants, and the distributor defendants granting such preference or protection are respectively as follows:

Theatre	Location	Preference or Protection Granted By
	Ohio	
Palace and Opera House	Ashland, Ohio	All major distributors
Athena	Athens, Ohio	All major distributors
Holland	Bellefontaine, Ohio	All major distributors
Bucyrus	Bucyrus, Ohio	All major distributors
State	Bucyrus, Ohio	All major distributors
Strand	Delaware, Ohio	All major distributors
Civic and Roxey	Fostoria, Ohio	All major distributors except Loew's
Princess	Medina, Ohio	All major distributors ex-except Columbia and Universal
Vine, Lyric, and Mt. Vernon	Mt. Vernon, Ohio	All major distributors except Columbia
[fol. 133b]		
Forum	Norwalk, Ohio	All major distributors
Schine Theatres in Piqua	Piqua, Ohio	All major distributors
Castamba	Shelby, Ohio	All major distributors
Strand	Van Wert, Ohio	All major distributors
Van Wert	Van Wert, Ohio	All major distributors
	Kentucky	
Kentucky and Hippodrome	Corbin, Kentucky	All major distributors
Margie Grand	Harlan, Kentucky	Unknown to plaintiff
Schine Theatres in Lexington	Lexington, Kentucky	All major distributors
Russell	Maysville, Kentucky	Unknown to plaintiff
Liberty	Pikeville, Kentucky	Unknown to plaintiff
	Maryland	
Strand	Cumberland, Maryland	Unknown to plaintiff
Arcade and Wicomoco	Salisbury, Maryland	All major distributors, particularly Paramount
	New York	
Regent, Rialto and Strand	Amsterdam, New York	All major distributors
Jefferson, Palace and Auburn	Auburn, New York	All major distributors
Fox and State	Corning, New York	All major distributors
State and Temple	Cortland, New York	All major distributors
Geneva and Regent	Geneva, New York	All major distributors

[fol. 133c]

Theatre	Location	Preference or Protection Granted By
	New York (Continued)	
Rialto, Empire, and Paramount	Glens Falls, New York	All major distributors
Schine Theatres in Gloversville, N. Y.	Gloversville, New York	All major distributors
Liberty	Herkimer, New York	All major distributors
Strand	Hudson Falls, New York	All major distributors
Capitol	Ilion, New York	All major distributors
Rialto	Little Falls, New York	All major distributors
Rialto	Lockport, New York	All major distributors
Malone	Malone, New York	All major distributors
Massena	Massena, New York	All major distributors except Columbia
Capitol	Newark, New York	All major distributors
Colonial	Norwich, New York	All major distributors
Strand	Ogdensburg, New York	All major distributors
Oneonta and Palace	Oneonta, New York	All major distributors
Schine Theatres in Oswego	Oswego, New York	All major distributors
Dixie	Rochester, New York	All major distributors
Strand	Seneca Falls, New York	All major distributors
State	Tupper Lake, New York	All major distributors
Avon, Olympic and Palace	Watertown, New York	All major distributors
Schine Theatres in Watertown	Watertown, New York	All major distributors

5

In response to paragraph V D of the defendants' specification of demands for a bill of particulars, the plaintiff [fol. 133d] states that the theatres acquired by the Schine defendants, which, after such acquisition, have been granted priority or preference over competing theatres by the distributor defendants, and the distributor defendants granting such priority or preference, are respectively as follows:

Theatre	Location	Preference or Protection Granted By
	Ohio	
Palace and Opera House	Ashland, Ohio	All major distributors
Athena	Athens, Ohio	All major distributors
Holland	Bellefontaine, Ohio	All major distributors
Bucyrus	Bucyrus, Ohio	All major distributors

Theatre	Location	Preference or Protection Granted By
	Ohio (Continued)	
State	Bucyrus, Ohio	All major distributors
Strand	Delaware, Ohio	All major distributors
Civic and Roxey	Fostoria, Ohio	All major distributors except Loew's
Princess	Medina, Ohio	All major distributors except Columbia and Universal
Vine, Lyric, and Mt. Vernon	Mt. Vernon, Ohio	All major distributors except Columbia
Forum	Norwalk, Ohio	All major distributors
Castamba	Shelby, Ohio	All major distributors
Van Wert	Van Wert, Ohio	All major distributors
Strand	Van Wert, Ohio	All major distributors
	Kentucky	
Margie Grand	Harlan, Kentucky	Unknown to plaintiff
Schine Theatres in Lexington	Lexington, Kentucky	All major distributors
Russell	Maysville, Kentucky	Unknown to plaintiff
Liberty	Pikeville, Kentucky	Unknown to plaintiff
[fol. 133e]		
	Maryland	
Strand	Cumberland, Maryland	Unknown to plaintiff
Arcade and Wicomoco	Salisbury, Maryland	All major distributors, particularly Paramount
	New York	
Jefferson, Palace and Auburn	Auburn, New York	All major distributors
Fox and State	Corning, New York	All major distributors
Rialto, Empire, and Paramount	Glens Falls, New York	All major distributors
Strand	Hudson Falls, New York	All major distributors
Rialto	Little Falls, New York	All major distributors
Colonial	Norwich, New York	All major distributors
Avon, Olympic and Palace	Watertown, New York	All major distributors
Dixie	Rochester, New York	All major distributors

6

In response to paragraph V E of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of competing theatres, over which theatres acquired by the Schine defendants have been granted priority and preference, are set forth below.

The distributor defendants granting such priority and preference are stated for the respective situations in the particulars heretofore set forth in paragraph 5 above.

[fol. 133f]

Theatre	*Town*
Ohio	Ashland, Ohio
Opera House	Ashland, Ohio
Court and Ohio	Athens, Ohio
Strand and Opera House	Bellefontaine, Ohio
State and Southern	Bucyrus, Ohio
Star Theatre	Delaware, Ohio
State	Fostoria, Ohio
Temple	Medina, Ohio
Memorial	Mt. Vernon, Ohio
Moose	Norwalk, Ohio
Opera House and State	Shelby, Ohio
Strand and Ohio	Van Wert, Ohio
New Harlan	Harlan, Kentucky
Opera House	Lexington, Kentucky
Washington and Maysville	Maysville, Kentucky
Waddington	Pikeville, Kentucky
Liberty, Maryland, Embassy and Garden	Cumberland, Maryland
Ulman's	Salisbury, Maryland
Capitol	Auburn, New York
Plaza and Regent	Corning, New York
State	Glens Falls, New York
Hippodrome	Little Falls, New —
Smalley's	Norwich, New York
Victoria, Liberty and State	Watertown, New York
Webster	Rochester, New York
Madison, Monroe and West End	Rochester, New York

7

For further and better particulars of the allegations contained in paragraph 46(b) of the complaint, and in response to paragraph VI A (1) of the deefndants' specification of demands for bill of particulars, the plaintiff states that the major distributors indicated below have consistently [fol. 133g] refused to license motion pictures on a local competive basis to the following theatres:

Theatre	Location	Distributors
	Ohio	
Ohio	Ashland, Ohio	All major distributors
Opera House	Ashland, Ohio	All major distributors
Court and Ohio	Athens, Ohio	All major distributors
Strand and Opera House	Bellefontaine, Ohio	All major distributors
State and Southern	Bucyrus, Ohio	All major distributors
Star Theatre	Delaware, Ohio	All major distributors
Star and Capitol	Delphos, Ohio	Unknown to plaintiff
State	Fostoria, Ohio	All major distributors except Loew's
Temple	Medina, Ohio	All major distributors except Columbia and Universal
Memorial	Mt. Vernon, Ohio	All major distributors except Columbia
Moose	Norwalk, Ohio	All major distributors
Opera House and State	Shelby, Ohio	All major distributors
Strand and Ohio	Van Wert, Ohio	All major distributors
Unknown to plaintiff	Troy, Ohio	Unknown to plaintiff
	Kentucky	
Mitchell	Barbourville, Kentucky	All major distributors
Viv	Corbin, Kentucky	All major distributors
New Harlan	Harlan, Kentucky	Unknown to plaintiff
Washington and Maysville	Maysville, Kentucky	Unknown to plaintiff
Waddington	Pikeville, Kentucky	Unknown to plaintiff

[fol. 133h]

	Maryland	
Liberty, Maryland, Embassy and Garden	Cumberland, Maryland	Unknown to plaintiff
Ulman's	Salisbury, Maryland	All major distributors, particularly Paramount
	New York	
Avon	Addison, New York	All major distributors
Orpheum	Amsterdam, New York	Unknown to plaintiff
Capitol	Auburn, New York	All major distributors
American	Canton, New York	All major distributors
Ideal	Chateaugay, New York	All major distributors
Playhouse	Clyde, New York	All major distributors
Smalley's	Cooperstown, New York	All major distributors
Plaza and Regent	Corning, New York	All major distributors
Smalley's	Delphi, New York	All major distributors
Smalley's	Dolgeville, New York	All major distributors
Palace	Fort Covington, N. Y.	All major distributors except Columbia

Theatre	Location	Distributors
	New York (cont.)	
Smalley's	Fort Plain, New York	All major distributors
Hollywood	Frankfort, New York	All major distributors
State	Glens Falls, New York	All major distributors
Corona	Groton, New York	All major distributors
Town Hall	Homer, New York	All major distributors
Capitol	Ilion, New York	All major distributors
Smalley's	Johnstown, New York	All major distributors
Hippodrome	Little Falls, New York	All major distributors
Palace	Lockport, New York	All major distributors
[fol. 133i]		
Avalon	Lowville, New York	All major distributors
Ohmann	Lyons, New York	All major distributors
Plaza	Malone, New York	All major distributors
Rialto	Massena, New York	All major distributors except Columbia
Star	Northville, New York	All major distributors
Smalley's	Norwich, New York	All major distributors
Elmwood	Penn Yan, New York	All major distributors
Poland	Poland, New York	All major distributors
Smalley's	Sidney, New York	All major distributors
Smalley's	St. Johnsville, N. Y.	All major distributors
Lyric	Tupper Lake, New York	All major distributors
Colonial	Waddington, New York	All major distributors except Columbia
State	Waterloo, New York	All major distributors
Strand, Liberty, Victoria and State	Watertown, New York	All major distributors
Webster	Rochester, New York	All major distributors
Madison, Monroe and West End	Rochester, New York	All major distributors

9

For further and better particulars of the allegations contained in paragraph 46(d) of the complaint, and in response to paragraph VIII A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theatres referred to include the following:

[fol. 133j]

Theatre	*Location*
Ohio and Opera House	Ashland, Ohio
Strand and Opera House	Bellefontaine, Ohio
Southern	Bucyrus, Ohio
State	Bucyrus, Ohio
Star	Delaware, Ohio
Temple	Medina, Ohio
Memorial	Mt. Vernon, Ohio
Moose	Norwalk, Ohio
Opera House and State	Shelby, Ohio
Ohio	Van Wert, Ohio
Viv	Corbin, Kentucky
New Harlan	Harlan, Kentucky
Waddington	Pikeville, Kentucky
Ulman's	Salisbury, Maryland
Capitol	Auburn, New York
Plaza and Regent	Corning, New York
Hippodrome	Little Falls, New York
Palace	Lockport, New York
Plaza	Malone, New York
Smalley's	Norwich, New York

—10

In response to paragraph VIII E of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that the refusal to sell second or subsequent run to all of the theatres set forth in paragraph 9 above was made at the request of the Schine defendants.

11

For further and better particulars of the allegations contained in paragraph 46(e) of the complaint, and in response to paragraph IX A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the [fol. 134] names and locations of the theatres over which it is claimed that unreasonable protection was granted to the Schine defendants by the distributor defendants, and

the distributor defendants granting such unreasonable protection are as follows:

Theatre	Location	Unreasonable Protection Granted By
Town Hall	Homer, New York	All major distributors
Corona	Groton, New York	All major distributors
State	Waterloo, New York	All major distributors
Lyric	Tupper Lake Junction, New York	All major distributors
Ohmann	Lyons, New York	All major distributors
American	Canton, New York	All major distributors
Playhouse	Clyde, New York	All major distributors
Capitol	Ilion, New York	All major distributors
Smalley's	Johnstown, New York	All major distributors
Smalley's	Dolgeville, New York	All major distributors
Smalley's	Fort Plain, New York	All major distributors
Smalley's	St. Johnsville, New York	All major distributors
Smalley's	Delphi, New York	All major distributors
Smalley's	Cooperstown, New York	All major distributors
Smalley's	Sidney, New York	All major distributors
Hippodrome	Little Falls, New York	All major distributors
Star	Northville, New York	All major distributors
Poland	Poland, New York	All major distributors
Hollywood	Frankfort, New York	All major distributors
Strand	Watertown, New York	All major distributors
Liberty	Watertown, New York	All major distributors
Palace	Fort Covington, New York	All major distributors except Columbia
Colonial	Waddington, New York	All major distributors except Columbia
Ideal	Chateaugay, New York	All major distributors
[fol. 135]		
Avalon	Lowville, New York	All major distributors
Elmwood	Penn Yan, New York	All major distributors
Mitchell	Barbourville, Kentucky	All major distributors
Star	Delphos, Ohio	Unknown to plaintiff
Capitol	Delphos, Ohio	Unknown to plaintiff
Avon	Addison, New York	All major distributors
Unknown to plaintiff	Troy, Ohio	Unknown to plaintiff

18

For further and better particulars of the allegations contained in paragraph 48 of the complaint and in response to paragraph XIII B of the defendants' specification of demands for a bill of particulars, the plaintiff states that paragraph 48 alleges that the "Schine circuit is able to main-

tain its local monopolies in its closed towns." Although the Schine circuit has monopolized the most desirable films in towns where there are competing theatres, the allegation to which this request relates refers only to local monopolies in the Schine closed towns and only those are being listed in this answer. They exist in the following towns:

New York
Amsterdam
Ballston Spa
Bath
Buffalo
Canandaigua
Carthage
Cortland
Dolgeville
East Rochester
Fairport
Gloversville
Geanville
Hamilton
Herkimer
Hudson Falls
Ilion
Little Falls
Lockport
Malone
Massena
[fol. 136]
Mechanicsville
Newark
Ogdensburg
Oneonta
Oswego
Penn Yan
Perry
Rochester
Salamanca
Saranac Lake
Seneca Falls
Syracuse
Tupper Lake
Utica

Ohio
Ashland
Athens
Bellefontaine
Bowling Green
Bucyrus
Delaware
Fostoria
Fremont
Kent
Medina
Mt. Vernon
Norwalk
Piqua
Ravenna
Shelby
Tiffin
Wooster

Kentucky
Corbin
Lexington
Maysville
Middlesboro
Paris
Richmond

Maryland
Cambridge
Easton
Federalsburg
Hurlock
St. Michaels

Delaware
Laurel
Milford

19

In response to paragraph XIII C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the competing theatres existing at the present time are as follows:

[fol. 137]

Theatre	*Location*
Ohio	Van Wert, Ohio
Waddington	Pikeville, Kentucky
New Harlan	Harlan, Kentucky
Ulman's	Salisbury, Maryland
Liberty, Maryland, Embassy, and Garden	Cumberland, Maryland
Orpheum	Amsterdam, New York
Capitol	Auburn, New York
Plaza	Corning, New York
Park	Geneva, New York
State	Glens Falls, New York
Smalley's	Norwich, New York
Victoria. Liberty, and State	Watertown, New York

20

In response to paragraph XIII D of the defendants' specification of demands for a bill of particulars, the plaintiff states that the identity and location of the towns in which the plaintiff claims that the only theatre or theatres in operation at the present time are the theatres of the Schine circuit have been set forth heretofore in paragraph 18 above.

22

In response to paragraph XIII H of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competing exhibitors referred to in the said paragraph 48 of the complaint include the following:

Ohio	
B. Bickert	Ashland
John Bahas	Ashland
Custer and Bieberson	Athens
Henry Damm	Bellefontaine
M. Mooney	Bellefontaine

[fol. 138] *Ohio (Cont.)*

H. Moller	Bellefontaine
N. Charnas and P. Charnas	Bucyrus
M. Bryer	Bucyrus
John Buchman	Delaware
Henry Bieberson	Delaware
Arthur and Ural Buck	Fostoria
Essick, Fine and Kramer	Medina
Emerson Long	Mount Vernon
Joseph Felter	Norwalk
Ralph Kemper	Shelby
Carl B. Moore	Van Wert
T. G. Evans	Van Wert

New York

Morris Kronick	Amsterdam
H. P. Wallace	Auburn
George Rosenbaum	Carthage
F. Gerber	Corning
Morris Gaby	Corning
Louis De Pillo	Geneva
Richard De Toto	Geneva
Fred Mausert	Glens Falls
N. K. Smith	Glens Falls
Thomas Warne	Little Falls
William Wood	Little Falls
Reliance Theatres, Inc.	Lockport
Charles Dickinson, Jr.	Lockport
Michael Boumansour	Malone
Frank Karus	Massena
W. G. Croucher	Newark
W. C. Smalley	Norwich
Eli Rosenbaum	Ogdensburg
John Cordingly	Oswego
Katherine Thompson	Rochester

[fol. 139]

Chester & Paul Fenneyvessy	Rochester
Max Fogel	Rochester
Peter C. Vournakis	Watertown
Graham and Ludlow	Watertown
Wm. Tishkoff	Rochester

Kentucky

Hiram Owens	Corbin
M. K. Murphy	Corbin

Kentucky (Cont.)	
G. C. Scott	Corbin
Price Coomer	Harlan
Harry Schwartz	Lexington
J. B. Russell	Maysville
W. J. Ward	Pikeville
Maryland	
Helen Ulman	Salisbury

23

For further and better particulars of the allegations contained in paragraph 49(a) of the complaint, and in response to paragraph XV A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the motion picture theatres that the Schine defendants have acquired for many years past as alleged in said paragraph are the following:

Theatre	*Location*
Star	Delaware, Ohio
Opera House	Ashland, Ohio
Ohio	Ashland, Ohio
Cort	Athens, Ohio
Ohio	Athens, Ohio
Strand	Bellefontaine, Ohio
Opera House	Bellefontaine, Ohio
[fol. 140]	
State	Bucyrus, Ohio
Southern	Bucyrus, Ohio
State	Fostoria, Ohio
Temple	Medina, Ohio
Memorial	Mount Vernon, Ohio
Moose	Norwalk, Ohio
Strand	Van Wert, Ohio
Viv	Corbin, Kentucky
Opera House	Lexington, Kentucky
Murray	Rochester, New York
Hippodrome	Little Falls, New York
Palace	Lockport, New York
Plaza	Malone, New York
Regent	Corning, New York
Strand	Delaware, Ohio
Strand	Hudson Falls, New York

Theatre	*Location*
Paris	Paris, Kentucky
Madison	Rochester, New York
Monroe	Rochester, New York
West End	Rochester, New York
Seneca	Seneca Falls, New York
Cla-zell	Bowling Green, Ohio
Ada Meade	Lexington, Kentucky
Russell	Maysville, Kentucky
Washington	Maysville, Kentucky
Hollywood	Maysville, Kentucky
Webster	Rochester, New York
Lyric	Bowling Green, Ohio

24

In response to paragraph XV B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the motion picture theatres that the Schine [fol. 141] defendants have attempted to acquire, as alleged in paragraph 49(a) of the complaint, are the following:[2]

Theatre	*Location*
Capitol	Auburn, New York
Palace	Lancaster, Ohio
State	Shelby, Ohio
Harrington	Harrington, Delaware
Ohio	Van Wert, Ohio
Palace	Seaford, Delaware
(Name unknown)	Oxford, Ohio

25

In response to paragraph XV C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the competitors that the Schine defendants have forced out of business, as alleged in said paragraph, include the following:

John Bahas	Ashland, Ohio
Bert Bickert	Ashland, Ohio

[2] Inasmuch as the theatres which the Schine defendants have acquired are listed in paragraph 23 above, they are not being listed in the answer to this demand, although attempts may have been made to acquire them before the actual acquisition took place.

Henry Bieberson	Athens, Ohio
Michael Boumansour	Malone, New York
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Ural Buck	Fostoria, Ohio
Nat Charnas	Bucyrus, Ohio
Phillip Charnas	Bucyrus, Ohio
E. R. Custer	Athens, Ohio
Henry Damm	Bellefontaine, Ohio
C. L. Dasher	Van Wert, Ohio
Richard De Toto	Seneca Falls, New York

[fol. 142]

Charles E. Dickinson, Jr.	Lockport, New York
Essick and Fine	Medina, Ohio
T. G. Evans	Van Wert, Ohio
Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, New York
Paul Fennyvessy	Rochester, New York
Max Fogel	Rochester, New York
Frederick Gerber	Corning, New York
Frank Hiltz	Norwalk, Ohio
R. T. Kemper	Shelby, Ohio
Emerson Long	Mount Vernon, Ohio
Milton Mooney	Bellefontaine, Ohio
M. K. Murphy	Corbin, Kentucky
Reliance Theatres, Inc.	Lockport, New York
Eli Rosenbaum	Ogdensburg, New York
George Rosenbaum	Carthage, New York
J. B. Russell	Maysville, Kentucky
Harry Schwartz	Lexington, Kentucky
G. C. Scott	Corbin, Kentucky
Katherine Thompson	Rochester, New York
Thomas Warne	Little Falls, New York
William Wood	Little Falls, New York
Charles Sesonske	Carthage, New York
W. G. Croucher	Newark, New York
Eli Rosenbaum	Ogdensburg, New York
Charles P. Gilmore	Oswego, New York

26

In response to paragraph XV D of the defendants' specification of demands for a bill of particulars, the plain-

tiff states that the competitors that the Schine defendants have attempted to force out of business, as alleged in said paragraph, include the following:

[fol. 143]

H. P. Wallace	Auburn, New York
Carl B. Moore	Van Wert, Ohio
Louis De Pillo	Geneva, New York
Morris Gaby	Corning, New York
Morris Kronick	Amsterdam, New York
Fred Mausert	Glens Falls, New York
N. K. Smith	Glens Falls, New York
William Tishkoff	Rochester, New York
Helen Ulman	Salisbury, Maryland
Peter C. Vournakis	Watertown, New York

29

For further and better particulars of allegations contained in paragraph 49 (a) (1) of the complaint, and in response to paragraph XVI A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances in which it is claimed that the Schine defendants threatened to build a theatre in opposition to another exhibitor relate to the following:

Leo Kessell	Lancaster, Ohio
Emerson W. Long	Mount Vernon, Ohio
Thomas Ayre	Seaford, Delaware
Reese Harrington	Harrington, Delaware
Jack Josey	Oxford, Ohio
Wilmington Amusement Co.	Oxford, Ohio
Harry Schwartz	Paris, Kentucky
Henry Bieberson	Delaware, Ohio

30

In response to paragraph XVI B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theatres that the Schine defendants have acquired for many years past, as alleged in paragraph 49 (a) (1), are as follows:

[fol. 144]

Theatre	*Location*
Strand	Delaware, Ohio
Paris	Paris, Kentucky
Palace	Ashland, Ohio

31

For further and better particulars of the allegations contained in paragraph 49(a) (2) of the complaint, and in response to paragraph XVII of the defendants' specification of demands for a bill of particulars, the plaintiff states that the theatres which it is claimed that the Schine defendants constructed in opposition to another exhibitor include the following:

Theatre	*Location*
Auburn	Auburn, New York
Vernon	Mount Vernon, Ohio
Holland	Bellefontaine, Ohio
Bucyrus	Bucyrus, Ohio
Van Wert	Van Wert, Ohio

32

For further and better particulars of the allegations contained in paragraph 49(a) (4) of the complaint, and in response to paragraph XIX A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the exhibitors, other than the Schine defendants, who have been deprived of desirable product or runs, and the periods of such deprivations, are as follows:

Theatre	Exhibitor	Period of Deprivation
Orpheum; Amsterdam, New York	Morris Kronick	1934 to date
Capitol; Auburn, New York	H. P. Wallace	1933 to date
Palace; Corning, New York	F. Gerber	1933 to 1938
Plaza; Corning, New York	Morris Gaby	1933 to date
[fol. 145]		
Park; Geneva, New York	Louis De Pillo	1940 to date
State; Glens Falls, New York	Fred Mausert	1936 to date
Hippodrome; Little Falls, New York	Thos V. and Wm. Wood	1932 to June 1937
Palace; Lockport, New York	Reliance Theatres Inc.	1933 to 1936
Plaza; Malone, New York	Michael Boumansour	1936 to 1941
Smalley's; Norwich, New York	William C. Smalley	1932 to date
Strand; Watertown, New York	Peter C. Vournakis	1933 to date
Victoria; Watertown, New York	Graham and Ludlow	1933 to date
Ohio; Ashland, Ohio	John Bahas	1935 to 1938
Opera House; Ashland, Ohio	T. Gutilla	1935 to 1936

Theatre	Exhibitor	Period of Deprivation
Court and Ohio; Athens, Ohio	Custer and Bieberson	1935 to 1936
Strand; Bellefontaine, Ohio	M. Mooney	1931
Opera House; Bellefontaine, O.	H. Moller	1931 to 1933
Southern; Bucyrus, Ohio	P. Charnas	1935 to 1937
Star; Delaware, Ohio	John Buchman	1936 to 1938
State; Fostoria, Ohio	Arthur and Ural Buck	1936 to 1937
Temple; Medina, Ohio	Essick, Fine and Kramer	1937 to 1939
Memorial; Mount Vernon, Ohio	Emerson W. Long	1934 to 1941
Moose; Norwalk, Ohio	Joseph H. Felter	1935 to 1936
State; Shelby, Ohio	Ralph Kemper	1937 to date
Ohio; Van Wert, Ohio	Carl B. Moore	1935 to date
Strand; Van Wert, Ohio	T. G. Evans	1935
Webster; Rochester, New York	Max Fogel	1931 to 1939
Madison, Monroe and West End; Rochester, New York	Fennyvessy Bros.	1931 to 1940
[fol. 146]		
Viv; Corbin, Kentucky	M. K. Murphy	1938 to 1940
New Harlan, Harlan, Kentucky	Price Coomer	1941 to date
Waddington; Pikeville, Kentucky	W. J. Ward	1939 to date
Ulman's; Salisbury, Maryland	Helen Ulman	1938 to date

33

For further and better particulars of the allegations contained in paragraph 49(a) (5) of the complaint, and in response to paragraph XX A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants announced the proposed construction and opening of a theatre in the neighborhood of another exhibitor at Lancaster, Ohio, Mount Vernon, Ohio, and Oxford, Ohio.

34

In response to paragraph XX B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants took the following interests in a theatre site in the neighborhood of other exhibitors:

Town	*Nature of Interest*
Malone, New York	Option to buy or lease
Perry, New York	Fee
Seaford, Delaware	Fee

35

In response to paragraph XX C of the defendants' specification of demands for a bill of particulars, the plaintiff states that the instances referred to in response to paragraphs XX A and XX B of the defendants' specification of demands, relating to theatres in the neighborhood of which such construction or opening was announced, or such in-
[fol. 147] terest acquired, by the Schine defendants, are the names and locations and are operated by the exhibitors indicated below:

Theatre	*Location*	*Exhibitor*
Palace Theatre	Lancaster, Ohio	Leo Kessel
Memorial Theatre	Mount Vernon, Ohio	Emerson W. Long
Plaza Theatre	Malone, New York	Michael Boumansour
Name unknown	Oxford, Ohio	Jack Josey
Auditorium Theatre	Perry, New York	Unknown to plaintiff
Palace Theatre	Seaford, Delaware	Thos. Ayre

36

For further and better particulars of the allegations contained in paragraph 49(a) (6) of the complaint, and in response to paragraph XXI of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants, or some of them, acquired superior title in a theatre controlled and operated by another exhibitor and took over the control and operation of such theatre in the instance of the Seneca Theatre, Seneca Falls, New York, theretofore operated by Richard De Toto; the Memorial Theatre, Mount Vernon, Ohio, theretofore operated by Emerson W. Long; and the State Theatre, Hamilton, New York, theretofore operated by parties unknown to the plaintiff.

37

For further and better particulars of the allegations contained in paragraph 49(a) (9) of the complaint, and in response to paragraph XXIV of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants took unreasonable protection over another exhibitor in the instances heretofore enumerated in paragraph 11 above.

[fol. 148] 39

For further and better particulars of the allegations contained in paragraph 49(b) (1) of the complaint, and in response to paragraph XXVI A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the situations in which it is claimed that the Schine defendants monopolized the first and preferred runs of all the high-class feature pictures distributed by the distributor defendants are those set forth in paragraph 3 above.

41

For further and better particulars of the allegations contained in paragraph 49(b) (3) of the complaint, and in response to paragraph XXVIII A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the Schine defendants have demanded and received unreasonable protection over other exhibitors in the instances heretofore set forth in paragraph 11 above.

45

For further and better particulars of the allegations contained in paragraph 49(c) (1) of the complaint, and in response to paragraph XXXIII A of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names and locations of the theatres which it is claimed that the Schine defendants kept closed, as alleged in said paragraphs, are the Strand Theatre, Seneca Falls, New York; Lyric Theatre, Mount Vernon, Ohio; and the Pontiac Theatre, Ogdensburg, New York.

46

For further and better particulars of the allegations contained in paragraph 49(c) (2) of the complaint, and in response to paragraph XXXIV A of the defendants' specifi-
[fol. 149] cation of demands for a bill of particulars, the plaintiff states that the Schine defendants kept the site of the Temple Theatre in Geneva, New York, and a vacant lot in Norwalk, Ohio, as alleged in paragraph 49(c) of the complaint.

47

For further and better particulars of the allegations contained in paragraph 49(c) (4) of the complaint, and in re-

sponse to paragraph XXXV D of the defendants' specification of demands for a bill of particulars, the plaintiff states that it is claimed that there were indications that other exhibitors intended to open theatres in Geneva, New York, and Medina, Ohio, both Schine towns, as alleged in said paragraph of the complaint. In the case of Geneva, New York, the name of the other exhibitor was Louis DePillo, and in the case of Medina, Ohio, the other exhibitor was a partnership or corporation in which P. E. Essick, Myer S. Fine, and Abe Kramer, all of Cleveland, were interested.

51

For further and better particulars of the allegations contained in paragraph 50 of the complaint, and in response to paragraph XXXVII of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names of the exhibitors claimed to have been systematically excluded from the opportunity of procuring high-class pictures under fair competitive conditions on first or preferred runs, and the locations of the theaters operated by such exhibitors are respectively as follows:

Exhibitor	*Location*
Ohio	
B. Bickert	Ashland
John Bahas	Ashland
Custer and Bieberson	Athens
Henry Damm	Bellefontaine

[fol. 150]

Ohio (continued)	
M. Mooney	Bellefontaine
H. Moller	Bellefontaine
N. Charnas and P. Charnas	Bucyrus
M. Bryer	Bucyrus
John Buchman	Delaware
Henry Bieberson	Delaware
E. L. Staup	Delphos
Arthur and Ural Buck	Fostoria
Essick, Fine, and Kramer	Medina
Emerson Long	Mount Vernon
Joseph Felter	Norwalk
Ralph Kemper	Shelby
C. F. Pfister	Troy

Exhibitor	*Location*
Carl B. Moore	Van Wert
T. G. Evans	Van Wert
New York	
Morris Kronick	Amsterdam
H. P. Wallace	Auburn
A. Papyanakos	Canton
George Rosenbaum	Carthage
L. E. Quinlan	Chateaugay
C. Perriello	Clyde
F. Gerber	Corning
Morris Gaby	Corning
C. H. Dopp	Frankfort
Louis De Pillo	Geneva
Richard De Toto	Geneva
Fred Mausert	Glens Falls
N. K. Smith	Glens Falls
Murray Briskin	Homer
Robert I. Pierce	Ilion
Thomas Warne	Little Falls

[fol. 151]

Exhibitor	*Location*
New York (Cont.)	
William Wood	Little Falls
Reliance Theatres, Inc.	Lockport
Charles Dickinson, Jr.	Lockport
E. J. Wolfe	Lowville
B. Ohmann	Lyons
Michael Boumansour	Malone
Frank Karus	Massena
W. G. Croucher	Newark
W. C. Smalley	Norwich
Eli Rosenbaum	Ogdensburg
John Cordingly	Oswego
Katherine Thompson	Rochester
Chester and Paul Fenneyvessy	Rochester
Max Fogel	Rochester
Charles Girard	Tupper Lake Junction
William Clark	Waddington
Peter C. Vournakis	Watertown
Graham and Ludlow	Watertown
Wm. Tishkoff	Rochester

Kentucky	
Hiram Owens	Corbin
M. K. Murphy	Corbin
G. C. Scott	Corbin
Price Coomer	Harlan
Harry Schwartz	Lexington
J. B. Russell	Maysville
W. J. Ward	Pikeville
Maryland	
Helen Ulman	Salisbury

53

For further and better particulars of the allegations contained in paragraph 52 of the complaint, and in response [fol. 152] to paragraph XXXIX of the defendants' specification of demands for a bill of particulars, the plaintiff states that the exhibitors claimed to have been forced out of business or compelled to dispose of their theatres are as follows:

John Bahas	Ashland, Ohio
Bert Bickert	Ashland, Ohio
Henry Bieberson	Athens, Ohio
Michael Boumansour	Malone, New York
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Ural Buck	Fostoria, Ohio
Nat Charnas	Bucyrus, Ohio
Phillip Charnas	Bucyrus, Ohio
E. R. Custer	Athens, Ohio
Henry Damm	Bellefontaine, Ohio
C. L. Dasher	Van Wert, Ohio
Richard D. Toto	Seneca Falls, New York
Charles E. Dickinson, Jr.	Lockport, New York
Essick and Fine	Medina, Ohio
T. G. Evans	Van Wert, Ohio
Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, New York
Paul Fennyvessy	Rochester, New York
Max Fogel	Rochester, New York
Frederick Gerber	Corning, New York
Frank Hiltz	Norwalk, Ohio
R. T. Kemper	Shelby, Ohio
Emerson Long	Mount Vernon, Ohio

Milton Mooney	Bellefontaine, Ohio
M. K. Murphy	Corbin, Kentucky
Reliance Theatres, Inc.	Lockport, New York
Eli Rosenbaum	Ogdensburg, New York
George Rosenbaum	Carthage, New York
J. B. Russell	Maysville, Kentucky

[fol. 153]

Harry Schwartz	Lexington, Kentucky
G. C. Scott	Corbin, Kentucky
Katherine Thompson	Rochester, New York
Thomas Warne	Little Falls, New York
William Wood	Little Falls, New York
Charles Sesonske	Carthage, New York
W. G. Croucher	Newark, New York
Eli Rosenbaum	Ogdensburg, New York
Charles P. Gilmore	Oswego, New York

54

In response to paragraph XXXIX B of the defendants' specification of demands for a bill of particulars, the plaintiff states that the other exhibitors competing with the Schine defendants claimed to have been compelled to sustain losses or reduced revenue from the operation of their theaters are the following:

Carl B. Moore	Van Wert, Ohio
Price B. Coomer	Harlan, Kentucky
Helen Ulman	Salisbury, Maryland
H. P. Wallace	Auburn, New York
Morris Gaby	Corning, New York
Louis De Pillo	Geneva, New York
Fred Mansert	Glens Falls, New York
William C. Smalley	Norwich, New York
Peter Vournakis	Watertown, New York
W. J. Ward	Pikeville, Kentucky
Morris Kronick	Amsterdam, New York

55

For further and better particulars of the allegations contained in paragraph 54 of the complaint, and in response to paragraph XLI of the defendants' specification of demands for a bill of particulars, the plaintiff states that the names

and locations of the individuals who have been denied the [fol. 154] right of engaging in the business of exhibiting motion pictures in the Schine towns or any of them on a fair competitive basis, and the Schine towns referred to are as follows:

Individual	*Location and Schine Town*
Ohio	
B. Bickert	Ashland
John Bahas	Ashland
Custer and Bieberson	Athens
Henry Damm	Bellefontaine
M. Mooney	Bellefontaine
H. Moller	Bellefontaine
N. Charnas and P. Charnas	Bucyrus
M. Bryer	Bucyrus
John Buchman	Delaware
Henry Bieberson	Delaware
E. L. Staup	Delphos
Arthur and Ural Buck	Fostoria
Essick, Fine, and Kramer	Medina
Emerson Long	Mount Vernon
Joseph Felter	Norwalk
Ralph Kemper	Shelby
C. F. Pfister	Troy
Carl B. Moore	Van Wert
T. G. Evans	Van Wert
New York	
Morris Kronick	Amsterdam
H. P. Wallace	Auburn
A. Papyanakos	Canton
George Rosenbaum	Carthage
L. E. Quinlan	Chateaugay
C. Perriello	Clyde
F. Gerber	Corning
[fol. 155]	
Morris Gaby	Corning
C. H. Dopp	Frankfort
Louis De Pillo	Geneva
Richard De Toto	Geneva
Fred Mausert	Glens Falls
N. K. Smith	Glens Falls
Murray Briskin	Homer
Robert I. Pierce	Ilion
Thomas Warne	Little Falls

Individual	*Location and Schine Town*
New York (Cont.)	
William Wood	Little Falls
Reliance Theatres, Inc.	Lockport
Charles Dickinson, Jr.	Lockport
E. J. Wolfe	Lowville
B. Ohmann	Lyons
Michael Boumansour	Malone
Frank Karus	Massena
W. G. Croucher	Newark
W. C. Smalley	Norwich
Eli Rosenbaum	Ogdensburg
John Cordingly	Oswego
Katherine Thompson	Rochester
Chester and Paul Fenneyvessy	Rochester
Max Fogel	Rochester
Charles Girard	Tupper Lake Junction
William Clark	Waddington
Peter C. Vournakis	Watertown
Graham and Ludlow	Watertown
Wm. Tishkoff	Rochester
[fol. 156]	
Kentucky	
Hiram Owens	Corbin
M. K. Murphy	Corbin
G. C. Scott	Corbin
Price Coomer	Harlan
Harry Schwartz	Lexington
J. B. Russell	Maysville
W. J. Ward	Pikeville
Maryland	
Helen Ulman	Salisbury

56

The plaintiff has incomplete knowledge and information as to each of the items contained in this bill of particulars, and hereby reserves its right to furnish further particulars regarding matters concerning which it may hereafter obtain further knowledge and information.

Dated December 4, 1941. Buffalo, New York.

United States of America, by George L. Grobe, United States Attorney.

Herbert Borkland, Special Assistant to the Attorney General.

John F. Clagett, Special Assistant to the Attorney General.

Seymour Simon, Special Attorney.

[fol. 157] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

AMENDMENT TO SUPPLEMENTAL BILL OF PARTICULARS

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and amends the first paragraph of the "Supplemental Bill of Particulars," heretofore filed on December 4, 1941, to read as follows:

Now comes the United States of America, the plaintiff in this action, by George L. Grobe, United States Attorney for the Western District of New York, and for further and better particulars of certain of the allegations of the "Amended Complaint," heretofore filed on May 12, 1941, with respect to which it has heretofore filed further particulars, states as follows:[1]

Dated December 8, 1941.

Buffalo, New York.

United States of America, by George L. Grobe, United States Attorney.

Herbert Borkland, Special Assistant to the Attorney General. John F. Clagett, Special Assistant to the Attorney General. Seymour Simon, Special Attorney.

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[1] These particulars replace the particulars contained in the following numbered paragraphs of the particulars filed by the plaintiff on August 8, 1940, in response to certain of the defendants' specification of demands for a bill of particulars: 3, 4, 5, 6, 7, 9, 10, 11, 18, 19, 20, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41, 45, 46, 47, 51, 53, 54, and 55. Each paragraph is here numbered the same as the corresponding paragraph in the plaintiff's bill of particulars of August 8, 1940, which it replaces.

[fol. 158] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

INTERROGATORIES PROPOUNDED BY THE "SCHINE DEFENDANTS" TO PLAINTIFF, UNITED STATES OF AMERICA

Please take notice that pursuant to Rule 33 of the Federal Rules of Civil Procedure, you are required to serve upon the undersigned, and to file within twenty days from the service of this demand upon you, answers to the following interrogatories propounded in behalf of the defendants, Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May, herein referred to as the "Schine defendants."

The term "cmplaint" wherever used in tehse Interrgatories, refers to the amended complaint served and filed by petitioner. The term "bill of particulars" refers to the bill of particulars served and filed by petitioner, which, by order of this Court dated July 2, 1941, was deemed extended to and applied to the amended complaint.

I. As to the allegations of paragraph 42 of the complaint:

A. State the total number of "first-class pictures" plaintiff will claim were collectively distributed by the distributor [fol. 159] defendants and the non-defendant distributors in the past ten years.

B. State and itemize the "first-class pictures" distributed by each of the eight so-called "major distributors" in each year during the past ten years, giving the name or title of each picture, the name of the distributor and the year of release.

C. Describe and itemize each factor which plaintiff will claim determines the character of a picture as a "first-class picture."

II. As to the allegations of paragraph 44 of the complaint:

A. (1) Identify by giving name and address of each of the "other distributors who are not defendants herein" referred to as independent distributors in the complaint herein.

(2) Identify by distributor and by year, and by name or title the feature pictures distributed by the said "other distributors" during each of the past ten years, which plaintiff claims are of a "secondary or inferior" quality, and those which plaintiff claims are both "satisfactory or suitable."

(3) State the number of feature pictures and the number of "satisfactory or suitable" feature pictures which plaintiff claims constitute the "reasonable needs" of any first-class theatre.

(4) State the number of feature pictures distributed by the eight so-called "major distributors," which plaintiff claims is necessary to operate successfully a first-class theatre in the "Schine towns," specifying the number with respect to each said "Schine town."

B. (1) Describe in detail the factors which plaintiff will claim as determining whether a theatre is a "first-[fol. 160] class theatre" as contemplated in paragraph 44 of the complaint.

(2) Give the name and location of every theatre in a "Schine town" not operated by the "Schine defendants," which plaintiff claims is a "first-class theatre."

C. Give the name and address of each person having knowledge of relevant facts tending to establish that in order to successfully operate a "first-class theatre" in any of the "Schine towns," an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the eight so-called "major distributors" in each year.

III. As to the allegations of paragraph 46 of the complaint, and the particulars of paragraph 4 of plaintiff's bill of particulars:

A. As to the allegation that the "Schine defendants" have combined and conspired with each other state:

(1) The time when and place where said defendants so combined and conspired with each other.

(2) The manner in which said defendants so combined and conspired.

(3) The name of the agent or agents, if any, through whom each of said defendants became a party to said combination and conspiracy.

(4) The terms of the alleged combination and conspiracy and the means which plaintiff will claim were agreed upon to carry out or execute the same.

(5) Whether the same was oral or in writing; if oral, state the substance thereof; if in writing furnish a copy thereof or identify the same by stating the description and location of each document containing relevant facts, which plaintiff will rely on as tending to establish such charge in whole or in part.

[fol. 161] (6) State in detail the facts which plaintiff will claim tend to establish when and how each of the so-called "major distributors" became a party to such conspiracy and the name of the agent or agents acting in its behalf.

B. As to the allegations that the "Schine defendants" have combined and conspired with each other and with the "distributor defendants" and "non-defendant distributors," state as to each of the eight so-called "major distributors" the following:

(1) The time when and place where each "major distributor" first so combined and conspired with the "Schine defendants" or any of them.

(2) The manner in which each "major distributor" so combined and conspired.

(3) The terms on which each "major distributor" became a party to the alleged combination and conspiracy.

(4) The means agreed upon for carrying out the alleged conspiracy and combination, the nature, scope and objective thereof, and the period throughout which plaintiff will claim the same has been in effect.

(5) The name of each person, firm or corporation claimed to have participated therein, and the nature and extent of his or its participation.

(6) The name and location of each independent exhibitor or other party claimed to have been injured thereby.

(7) Whether the same was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing furnish a copy thereof or identify the same by describing and giving the location of each document containing relevant facts, which plaintiff will claim tends to establish or substantiate such charge in whole or in part.

[fol. 162] (8) Each act and thing done by each such participant as a part of or to effectuate the said conspiracy and combination, together with the date and place of each such act or thing, and the name of the agent, if any, through whom it was done.

C. State the name, address and location of each exhibitor other than the "Schine defendants," in each situation enumerated in paragraph 4 of plaintiff's bill of particulars, which plaintiff will claim was injured by the alleged monopoly of "first-and preferred-run exhibition of motion pictures."

IV. As to the allegations of paragraph 46(a) of the complaint state:

A. If it is claimed that in granting such preference and protection to the "Schine defendants," any "major distributor" acted as a result of an agreement between said "major distributor" and the "Schine defendants," as to such "major distributor" state with respect to such agreement the following:

(1) The times and places plaintiff will claim such agreement or agreements were entered into.

(2) The names of the parties thereto and the time when each became a party thereto.

(3) Whether the same was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing, furnish a copy thereof, if available, or identify the same by describing and furnishing the location of each document containing relevant facts, which plain-

tiff will claim tend to establish or substantiate such charge in whole or in part.

B. Define the words "uniformly granted" as used in paragraph 46 of the complaint and state which of the eight so-called "major distributors" plaintiff will claim "uniformly granted" the privileges referred to in paragraph 46 of the complaint.

[fol. 163] (1) Does plaintiff claim that the distributors mentioned and described in answer to "B" above, each "uniformly granted" the privileges referred to in paragraph 46 by reason of an agreement among them.

(2) If the answer to the preceding interrogatory is in the affirmative state:

(a) The date thereof.

(b) The names of each of the parties thereto.

(c) If plaintiff will claim that said agreement is to be inferred from acts and circumstances, state each particular act relied upon to establish the agreement asserted to be inferred therefrom.

(d) Indicate with respect to each act the date and place where same was committed; the name of the distributor committing such act; the name of the person or persons acting in behalf of each such distributor; the name of the person or persons acting on behalf of each of the "Schine defendants" involved in connection therewith.

V. As to the particulars in paragraph numbered 6 of plaintiff's bill of particulars:

A. With respect to each of the alleged "competing theatres" named in paragraph numbered 6 of plaintiff's bill of particulars, state the following:

(1) Age of each theatre, giving as near as possible the date of construction or date when converted into a motion picture theatre.

(2) Seating capacity of each of said theatres.

(3) Type and quality of seats and other furniture and furnishings.

(4) Type and quality of projection and sound equipment.

(5) Admission prices charged by each theatre.

[fol. 164] VI. As to the allegations of paragraph 46 (b) of the complaint and the particulars of paragraph numbered 7 of plaintiff's bill of particulars:

A. Define and describe the meaning of the words "local competitive basis", indicating each factor or element considered in arriving thereat.

(1) Indicate in what respects plaintiff will claim the application of said meaning and definition to each competitive theatre situation in each "Schine town".

(2) Indicate in what respects plaintiff will claim the application of said meaning and definition in the case of the Plaza Theatre, Malone, New York, and Memorial Theatre, Mount Vernon, Ohio.

B. State as to each of the following whether plaintiff considers the same as a factor in the meaning of the term "local competitive basis":

(1) Size of theatre involved.

(2) Condition of theatre equipment.

(3) Credit standing of operator or owner of theatre.

(4) Prior record of operator or owner of theatre in fulfilling contract commitments.

(5) Length of time during which particular exhibitor or operator has been a customer of the distributor or distributors involved.

C. With respect to each refusal to license motion pictures on a "local competitive basis" in each instance enumerated in paragraph numbered 7 of the plaintiff's bill of particulars, and any additional instances which may have come to the plaintiff's knowledge, since, furnish the following information:

(1) Date of such refusal.

(2) The name of the person or persons acting in behalf of each "major distributor" in connection

[fol. 165] therewith, the name of the exhibitor and the identity and location of his theatre, who plaintiff claims was so refused.

(3) The nature of each offer (if any) claimed to have been made by each such exhibitor for the privilege of licensing the motion pictures distributed by the said "major distributors" and furnish the terms offered, the date of such offer and whether same was oral or in writing in whole or in part.

(a) If oral the substance thereof; if in writing furnish a true copy of such offer.

(b) Describe and state the location of such document which plaintiff will claim tends to establish or substantiate such charge in whole or in part.

(c) Name of the agent or agents, if any, acting on behalf of each "major distributor" in making such refusal.

(4) Enumerate the "local competitive factors" which plaintiff will claim were disregarded in connection with such refusal.

D. Identify each instance in which it is claimed that the "Schine defendants" "have collectively contracted with each of the distributors (defendant and non-defendant) for all of the feature motion pictures annually required for exhibition at all of the theatres operated by the Schine defendants" in the "Schine towns" in advance of the production and distribution of such feature pictures, and before such feature pictures or any of them have been offered to any other exhibitor in said towns, and furnish in each instance such particulars as will identify the particular contract or contracts involved.

VII. As to the allegations of paragraph 46 (c) of the complaint:

[fol. 166] A. State in what respects so-called rejection privileges granted to the "Schine defendants" differed from rejection privileges granted to other exhibitors.

(1) Furnished specific instances of such different rejection privileges, giving name and location of each

theatre in each instance and the precise differences claimed.

(2) Identify fully each instance in which it is claimed the "Schine defendants" "have been granted substantial rejection privileges" not normally granted to other exhibitors, specifying in each instance in which respects the said rejection privileges granted to the "Schine defendants" are greater than those normally granted to other exhibitors.

B. State in what respect so-called "right and privilege to play certain specific feature pictures without assuming any binding obligation to do so" granted to the "Schine defendants" differ from similar privileges granted to other exhibitors.

(1) Furnish specific instances of such different "right and privilege to play certain specific feature pictures without assuming any binding obligation to do so", giving the name and location of each theatre in each instance and the precise differences claimed.

(2) Identify fully each instance in which it is claimed the "Schine defendants" were granted the right and privilege to "play certain specific feature pictures without assuming any binding obligation" to do so.

C. Furnish specific instances of refusal to grant similar privileges to other exhibitors in competition with the "Schine defendants", stating as to each instance:

(1) The name and location of each theatre.

[fol. 167] (2) Date when request was made, and name of distributor from whom request was made.

(3) Date when refusal was made and name of distributor claimed to have made refusal.

(4) Whether the request and subsequent refusal were oral or in writing, in whole or in part; if oral state the substance thereof and by whom made; if in writing, furnish copies thereof, if available, or identify by describing and furnishing the name and location of each document which plaintiff will claim tends to establish and substantiate the charge wholly or in part.

VIII. As to the allegations of paragraph 46(d) of the complaint and particulars of paragraphs numbered 9 and 10 of the plaintiff's bill of particulars:

A. As to the allegation that "distributor defendants and non-defendant distributors have uniformly refused to sell a second or subsequent run in opposition to a theatre or theatres operated by the "Schine defendants", identify by name and location each theatre which it is claimed was refused second or subsequent run by each of the eight so-called "major distributors", stating as to each such instance:

(1) Date when request was made.

(2) Date when refusal was made.

(3) Whether request or refusal were oral or in writing, in whole or in part; if oral, the substance thereof; if in writing, furnish a copy thereof, if available, or identify by furnishing particulars of the name and location of each document which plaintiff will claim tend to establish or substantiate the charge in whole or in part.

(4) The names of the agent or agents, if any, acting on behalf of each "major distributor" in making such refusal.

[fol. 168] (5) The periods during which plaintiff will claim the said refusals were in force and effect in each instance.

B. If it is claimed that the "distributor defendants and non-defendant distributors" made the refusals alleged in paragraph 46(d) of the complaint as the result of a request made by the "Schine defendants" or any of them, state the following:

(1) The date when the request was made.

(2) Whether request was oral or in writing; if oral, the substance thereof, if in writing, furnish a copy thereof, if available, or identify by furnishing particulars of the same.

(3) By whom on behalf of the "Schine defendants" such request was made and to whom on behalf of distributor or distributors, naming each.

C. As to the instance relating to the Plaza Theatre, Malone, New York, as set out in paragraph 10 of the plaintiff's bill of particulars, and any other similar instances which may have come to plaintiff's knowledge since, state the following:

(1) The date of the alleged request.

(2) The place where it was made.

(3) The party making the same.

(4) The party to whom same was communicated.

(5) Whether such request was in writing or oral, in whole or in part; if oral, the substance thereof; if in writing, furnish copies thereof if available, or identify by describing the nature and location of each document which plaintiff will claim tends to substantiate or establish the charge in whole or in part.

IX. As to the allegations of paragraph 46(e) of the complaint:

A. With respect to the claim that the "major distributors" have granted the "Schine defendants" unreasonable [fol. 169] protection over other exhibitors, state with respect to each instance the amount of clearance allegedly so granted in favor of the theatres operated by the "Schine defendants" and the maximum amount of clearance plaintiff claims would have been reasonable in each of such situations.

(1) State each factor or element considered by plaintiff in arriving at its answer to IX A. above.

(2) Set forth each and every instance, if any, which has come to the knowledge of plaintiff in addition to the instances set forth in paragraph 11 of plaintiff's bill of particulars.

B. As to each instance of unreasonable protection claimed by the plaintiff, state the following:

(1) The time or period during which such unreasonable protection will be claimed to have been in force.

(2) The extent to which it is claimed the protection granted was unreasonable.

C. If it is claimed that the unreasonable protection was granted as a result of a request made by the "Schine defendants", or any of them, state:

(1) The date or dates of such request.

(2) By whom the request was made in behalf of the "Schine defendants" and to whom in behalf of the "major distributors".

(3) Whether the request was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing, attach a copy of each such writing if available or furnish a description of the nature and location of each document which plaintiff will claim tends to substantiate or establish the charge in whole or in part.

D. If it is claimed that any of the "major distributors" have granted the unreasonable protection alleged in para-
[fol. 170] graph 46(e) of the complaint, pursuant to an agreement between such "major distributors" and the "Schine defendants", state the following:

(1) The times and places plaintiff will claim such agreement or agreements were entered into.

(2) The names of the parties thereto and the time when each became a party thereto.

(3) Whether the same was oral or in writing, in whole or in part; if oral the substance thereof; if in writing furnish a copy thereof or identify the same by describing and furnishing the location of each document containing relevant facts, which plaintiff will claim tend to establish or substantiate such charge in whole or in part.

X. As to the allegations of paragraph 46(f) of the complaint and paragraphs 13 and 14 of the bill of particulars:

A. Give specific instances which plaintiff will claim of higher rentals for less favorable runs in connection with the four theatres named in paragraphs 13 and 14 of plaintiff's bill of particulars and by other theatres which have come to the knowledge of plaintiff since the service of said bill of particulars, furnishing in each instance:

(1) The name and title of the picture and the name of the distributor.

(2) The rental paid in each instance and designating whether a flat rental or percentage rental, and if a percentage rental, the terms of said rental.

(3) Details of the run claimed to be comparable or less favorable.

(4) Rentals which plaintiff will claim were paid by the "Schine defendants" with respect to the instances enumerated.

[fol. 171] B. If it is claimed that in licensing pictures to the "Schine defendants" at rentals less than those which other exhibitors have paid for comparable or less favorable runs, any of the "major distributors" acted as a result of an agreement between such "major distributor" and the "Schine defendants," state the following:

(1) The times and places plaintiff will claim such agreement or agreements were entered into.

(2) The names of the parties thereto and the time when each became a party thereto.

(3) Whether the same was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing furnish a copy thereof or identify the same by describing and furnishing the location of each document containing relevant facts, which plaintiff will claim tend to establish or substantiate such charge in whole or in part.

C. State in what respects and to what extent it is claimed that the run licensed to such other exhibitor was comparable to or less favorable than the run licensed to the "Schine defendants."

XI. As to the allegations of paragraph 46(g) of the complaint and paragraphs 15, 16 and 17 of plaintiff's bill of particulars:

A. As to the allegations "that the distributor defendants have licensed to the Schine defendants motion pictures greatly in excess of the reasonable exhibition requirements of their theatres," state the name of each Schine theatre which it is claimed licensed motion pictures greatly in ex-

cess of its reasonable exhibition requirements, stating as to each the following:

(1) The period or periods during which it is claimed such excessive licensing occurred.

[fol. 172] (2) The extent to which it is claimed such licensing was in excess of the reasonable exhibition requirements of said theatre.

(3) What plaintiff will claim was the reasonable exhibition requirements of each such theatre.

(4) Each factor and element considered by plaintiff in determining the reasonable exhibition requirements of each such theatre.

B. As to the allegation that the major distributors "prevented other exhibitors from using said pictures at all or from getting them while they are still new", state the following with respect to each exhibitor mentioned in paragraphs 15, 16 and 17 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since service and filing of said bill of particulars:

(1) The name of every picture which such exhibitor was prevented from using either at all or while still new.

(2) The date when such picture was requested by such exhibitor.

(3) The date when such picture was refused to such exhibitor and the name of the distributor refusing the same.

C. If it is claimed that the other exhibitors were prevented from using the said pictures at all or from getting them while they are still new, at the request of the "Schine defendants" or any of them, state:

(1) The date of said request.

(2) By whom in behalf of the "Schine defendants" such request was made and to whom in behalf of the distributors, naming each.

(3) Whether such request was oral or in writing, in whole or in part; if oral, state the substance thereof;

if in writing, furnish a copy thereof if available, [fol. 173] or identify by describing the nature and location of each document which plaintiff will claim tends to substantiate or establish the charge in whole or in part.

D. If plaintiff claims that in licensing pictures in excess of the reasonable requirements to the "Schine defendants", any of the "major distributors" acted as a result of an agreement between such "major distributors" and the "Schine defendants", state the following:

(1) The time and places plaintiff will claim such agreement or agreements were entered into.

(2) The names of the parties thereto and the time when each became a party thereto.

(3) Whether the same was oral or in writing, in whole or in part; if oral, the substance thereof; if in writing, furnish a copy thereof or identify the same by describing and furnishing the location of each document containing relevant facts, which plaintiff will claim tend- to establish or substantiate such charge in whole or in part.

XII. As to the allegations of paragraph 47 of the complaint.

A. Identify each request of the Schine defendants to any distributor in response to which it is claimed the advantages referred to in said paragraph were granted to the Schine defendants, and the restraints referred to in said paragraph or imposed upon competitors of the Schine defendants, and as to each distributor state with respect to each such request:

(1) The time when and place where it is claimed such request was made.

[fol. 174] (2) The person or persons making such request and the person or persons to whom it is claimed such request was made.

(3) Whether such request was oral or in writing; if oral, state the substance thereof; if in writing, furnish a copy thereof or identify the same.

(4) The town or towns and the theatre or theatres with respect to which it is claimed such request was given.

B. With respect to the allegation that each of the distributor defendants granted "the uniform advantages to the Schine defendants • • • with knowledge of the uniformity of action taken by all said distributors and with knowledge of the competitive effect as hereinafter alleged by such uniform action", as to each such instance in which it is claimed such action was taken, state:

(1) The knowledge and the source thereof which plaintiff claims each distributor had of the action taken or to be taken by each of the other distributors.

(2) The particular action claimed to have been taken by each distributor.

(3) The agent or agents of each distributor whose knowledge it is claimed constituted the knowledge of each distributor.

C. As to the allegation with respect to "knowledge of the competitive effect as herein alleged of such uniform action" state:

(1) Each and every element or factor which plaintiff will claim constitutes the competitive effect of such alleged uniform action.

(2) The knowledge and source thereof that it is claimed the "Schine defendants" or any of them had with respect to said competitive effect.

[fol. 175] (3) The agent or agents of the Schine defendants or any of them, whose knowledge it is claimed constituted the knowledge of the said "Schine defendants."

(4) State the name of each "competing exhibitor" and the name and location of his theatre, upon whom it is claimed that the distributors imposed "the foregoing uniform restraints", giving with respect to each such instance the date upon which such restraints were imposed and each specific alleged restraint claimed to have been imposed.

XIII. As to the allegations of paragraph 48 of the complaint and paragraphs 18, 19, 20, 21 and 22 of plaintiff's bill of particulars:

A. State as to each of the theatres enumerated as a "competing theatre" in paragraph 19 of plaintiff's bill of particulars, the following information:

(1) The name of the Schine theatre or theatres with which it is alleged to compete.

(2) The names of the owners or operators of each such theatre for the past ten years.

(3) The age of each theatre, giving as near as possible the date of construction, or the date when converted into a motion picture theatre.

(4) Seating capacity of each said theatre, the type and quality of seats, furniture, furnishings, projection and other equipment.

(5) Admission prices charged in each of said theatres for the past ten years.

(6) Describe in detail what factors plaintiff applies in describing each of said theatres as a "competing theatre" other than its location in the same town in which a Schine theatre is located.

(7) State as to each such "competing theatre" whether it is an "independent" theatre or part of a [fol. 176] "chain" of two or more theatres and if the latter, the name of such circuit and the name and location of each theatre in such circuit.

(8) State as to each such "competing theatre" each instance in which plaintiff will claim a disregard of the so-called local competitive factors as described in paragraph 21 of plaintiff's bill of particulars, furnishing in each instance:

(a) The name and location of the theatre involved.

(b) The name of the distributor involved.

(c) The name of the picture or pictures involved, the dates played and rental price offered by the exhibitor, the rental price charged by the distributor

and all other details necessary to identify each such instance.

(c) Enumerate the "local competitive factors" which plaintiff will claim were disregarded in connection with such competing theatre.

(9) Describe in detail each instance of "circuit buying" on the part of the Schine defendants and correlative "circuit selling" on the part of the distributors, or any of them, furnishing as to each:

(a) The date of each such "circuit buying" contract.

(b) The name of the distributor with whom made.

(c) The name and location of each Schine theatre involved in such contract.

(d) The product season involved in such contract or if such contract specifies details of pictures, each detail involved.

B. State as to each town enumerated in paragraph 18 of the plaintiff's bill of particulars, the following information:

[fol. 177] (1) The population of said town, 1930 and 1940 census.

(2) Average per capita income of said town.

(3) Nature and extent of industrial activity of said town.

(4) The date when plaintiff will claim competition ceased and local monopoly commenced, giving in each instance the name and address of each competitive theatre during the past ten years, if any, and the circumstances which plaintiff will claim caused such theatre to cease operation.

C. State whether the term "local competitive factors" includes any other factors other than that specifically mentioned in paragraph 21 of the plaintiff's bill of particulars, and if so, itemize, describe and define same in detail.

D. As to the competing exhibitors named in paragraphs 19 and 22 of plaintiff's bill of particulars, state as to each

such theatre with respect to feature pictures exhibited therein:

(1) Whether the said feature pictures were licensed for such theatre alone or as part of a single transaction or contract covering two or more theatres in which said exhibitor has or had an interest or participation, or as part of a joint booking arrangement.

(2) If as part of a single transaction covering two or more theatres, state as to each said exhibitor for each of the motion picture seasons involved, the names and locations of the other theatres included in such transaction or contract.

(3) Name each distributor with whom such contract was entered into, stating as to said competing exhibitors or any of them, each instance in which such competing exhibitor in the past ten years contracted for picture requirements in so-called "blocks" in ad- [fol. 178] vance of each season and as to each instance state:

(a) The name and location of each theatre so contracting for product.

(b) The name of each distributor with whom such block booking contracts were entered into.

(c) Date of each such contract.

(d) Period or season covered by same.

XIV. As to paragraph 49 of the complaint:

A. Describe in detail the alleged combination between the Schine defendants and the distributors, including the following:

(1) The names of each of the parties thereto.

(2) The date when each such party joined such combination.

(3) Each act and thing or omission done or committed by each of the parties to such alleged combination as part of or to effectuate the same, together with the date and place of each such act or omission and the name of the person or persons committing such act or omission.

XV. As to the allegations of paragraph 49 (a) of the complaint and the particulars of paragraphs 23, 24, 25, 26, 27 and 28 of the plaintiff's bill of particulars:

A. As to each theatre mentioned in paragraph 23 of the plaintiff's bill of particulars, state:

(1) The date when each such theatre was acquired.

(2) The particular method or means which plaintiff will claim were employed or used by the Schine defendants in connection therewith.

B. As to each theatre mentioned in paragraph 24 of the bill of particulars, state:

(1) The exact date or dates when plaintiff will claim [fol. 179] the Schine defendants attempted to acquire each such theatre.

(2) The precise method or methods claimed to have been used by the Schine defendants in connection therewith.

(3) The name of each person claimed to have acted on behalf of the Schine defendants or any of them.

C. As to each theatre which Schine defendants are alleged to have forced out of business as mentioned in paragraph 25 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The exact date or dates when plaintiff will claim said theatres were forced out of business.

(2) The precise method or methods claimed to have been used by the Schine defendants in connection therewith.

(3) The name of each person claimed to have acted on behalf of the Schine defendants or any of them.

D. As to each theatre which the Schine defendants are alleged to have attempted to force out of business, as enumerated in paragraph 26 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The exact date or dates when plaintiff will claim the Schine defendants attempted to force the said competitors out of business.

(2) The precise method or methods claimed to have been used by the Schine defendants in connection therewith.

(3) The name of each person claimed to have acted in behalf of the Schine defendants or any of them.

E. Give the name of each distributor who plaintiff claims participated in the acts alleged in paragraph 49 of the complaint, stating as to each:

[fol. 180] (1) The manner or method used in such participation.

(2) The alleged acts of participation and the dates thereof.

(3) The name of each person claimed to have acted in behalf of each distributor named in answer to this interrogatory.

XVI. As to the allegations of paragraph 49 (a) (1) of the complaint and paragraphs 29 and 30 of plaintiff's bill of particulars:

A. With respect to each instance in which it is claimed that the Schine defendants threatened to build a theatre in opposition to another exhibitor as enumerated in paragraph 29 of plaintiff's bill of particulars, and any other instances which may have come to plaintiff's knowledge since, state:

(1) The date when such threat was made.

(2) The name of the exhibitor to whom the threat was communicated and the theatre in relation to which such threat was made.

(3) The manner in which such threat was communicated.

(4) By whom on behalf of the Schine defendants such threat was made.

(5) To whom on behalf of exhibitor such threat was made.

(6) If such threat was in writing, furnish a copy; if oral, state the substance thereof.

(7) Whether such other exhibitor sold or leased said theatre to the Schine defendants or any of them.

(8) Whether the plaintiff will claim that such sale or leasing resulted from such threat or threats.

(9) The date of such sale or lease and the terms and conditions thereof.

[fol. 181] B. As to each theatre acquired by the Schine defendants for many years past and enumerated in paragraph 30 of the plaintiff's bill of particulars, state whether plaintiff will claim that the Schine defendants acquired same by threats, intimidation or other unlawful means.

(1) As to each theatre in which the answer is in the affirmative, state the details requested in A, (1) to (9) inclusive, *supra*.

XVII. As to the allegations of paragraph 48 (a) (2) of the complaint and paragraph 31 of plaintiff's bill of particulars:

A. State as to each theatre constructed by the Schine defendants in opposition to another exhibitor, in what respect plaintiff will claim such construction was in violation of law.

B. As to each newly constructed theatre state in detail exactly what product such newly constructed theatre is alleged to have taken away from such other exhibitor.

C. State in detail as to each such other exhibitor in what respects plaintiff will claim his position was inferior to his position prior to the opening of the newly constructed theatre.

XVIII. As to the allegations of paragraph 49 (a) (3) of the complaint:

A. Identify each instance in which it is claimed that the Schine defendants threatened to deprive another exhibitor of desirable product or run in the event of his failure to sell or lease to said defendants, as alleged in said paragraph, and as to each such instance state:

(1) The name of the person who it is claimed made such threat on behalf of the Schine defendants.

[fol. 182] (2) The name of the exhibitor to whom such threat was communicated.

(3) The name and location of the theatre or theatres in relation to which such theatre was made.

(4) The date when such threat was made.

(5) Whether such threat was oral or in writing; if oral, state the substance thereof; if in writing, furnish a copy.

(6) Describe the product or run of which it is claimed the Schine defendants threatened to deprive such other exhibitor.

XIX. As to the allegations of paragraphs 48 (a) (4) of the complaint and paragraph 32 of plaintiff's bill of particulars:

A. As to each theatre named in paragraph 32 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed such theatre was deprived of desirable product or run, state the following:

(1) The product or run which such exhibitor was using prior to such alleged deprivation.

(2) The product or run which such exhibitor used subsequent to such alleged deprivation.

(3) The product or run of which such exhibitor was allegedly deprived.

(4) The manner in which it is claimed the Schine defendants accomplished such deprivation.

(5) The position to which it is claimed such other exhibitor was relegated as a result of such deprivation and to what extent and in what manner it is claimed such new position was inferior to the position previously occupied by him.

B. State the factors or elements which plaintiff claims constitute "desirable product or run" as alleged in said paragraph.

[fol. 183] C. State the name of each distributor and of each person acting in such distributor's behalf, who aided or participated in depriving such other exhibitor of desirable product or run.

XX. As to the allegations of paragraph 49(a) (5) and paragraphs 33, 34 and 35 of plaintiff's bill of particulars:

A. As to each instance mentioned in paragraph 49(a) (5) of the complaint and enumerated in paragraphs 33, 34 and 35 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The time when, place where and manner in which it is claimed the suggestion was conveyed to such other exhibitor that the Schine defendants intended to build or open a theatre if such exhibitor would not agree to sell or lease to them.

(2) If such suggestion was conveyed in writing, furnish a copy; if oral, state the substance thereof.

(3) The name of the person conveying each such suggestion in behalf of the Schine defendants, and whether such person acted as an employee or agent of the Schine defendants directly, or was a "third party" as characterized in the complaint.

XXI. As to the allegations of paragraph 49(a) (6) of the complaint and paragraph 36 of plaintiff's bill of particulars:

A. As to each instance therein enumerated, or any others which may have come to plaintiff's knowledge since, state:

(1) The date of the acquisition of superior title by Schine defendants.

(2) The manner of the acquisition of superior title by the Schine defendants, e. g. whether by purchase of fee, acquisition of lease or other methods.

[fol. 184] (3) The date of the taking over of control or operation of such theatre by the Schine defendants.

XXII. As to the allegations of paragraph 49 (a) (7) of the complaint:

A. Identify each instance in which it is claimed that the Schine defendants cut admission prices as alleged in said paragraph, and with respect to each such instance state:

(1) The name and location of the theatre operated by the Schine defendants which it is claimed cut admission prices.

(2) The name and location of the theatre or theatres with whom it is claimed such theatre was in competition.

(3) The admission scale of the Schine theatre prior to such cut.

(4) The admission scale of the Schine theatre subsequent to such cut.

(5) The admission scale of such competing theatre prior to such cut.

(6) The admission scale of such competing theatre subsequent to such cut.

(7) The dates, both as to the Schine theatre and the competing theatre involved, when any such change in admission prices went into effect and the duration of each such admission price policy.

XXIII. As to the allegations of paragraph 49(a)(8) of the complaint:

A. Identify each instance in which it is claimed that "unusual and costly games and giveaways" were resorted to as alleged in said paragraph and as to each instance state:

(1) The name and location of each theatre operated [fol. 185] by the Schine defendants in which such unusual and costly games and giveaways were resorted to.

(2) The name and location of the theatre or theatres with which each such theatre is alleged to be in competition.

(3) The dates when each such Schine theatre commenced to resort to such games and giveaways.

(4) Whether or not the competing theatres also employed such methods of competition. If so, the time when and manner and extent to which employed.

XXIV. As to the allegations of paragraph 49(a)(9) of the complaint and paragraph 37 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 37 of plaintiff's bill of particulars and any other instances which may have come to plaintiff's knowledge since, in which plaintiff will claim the Schine defendants took unreasonable protection over other exhibitors, state:

(1) The name and location of the Schine theatres in whose favor such unreasonable protection was granted.

(2) The name and location of the theatre or theatres over whom such unreasonable protection was obtained.

(3) The extent by area and period of time of the protection granted such Schine theatre.

(4) The date when such protection was first granted such Schine theatre.

(5) Whether such protection is still in force and effect and if not, when it terminated.

(6) The extent to which it is claimed such protection was "unreasonable."

[fol. 186] (7) The name of each distributor and the names of the persons acting in such distributor's behalf, who granted such alleged unreasonable protection or aided or participated in the granting thereof.

XXV. As to the allegations of paragraph 49 (b) of the complaint:

A. Identify each town in which it is claimed that the Schine defendants have restrained trade and monopolized the exhibition of motion pictures, and with respect to each town so identified, state:

(1) The manner in which it is claimed the Schine defendants have restrained trade and monopolized the exhibition of motion pictures.

XXVI. As to the allegations of paragraph 49(b)(1) of the complaint and paragraphs 39 and 40 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge, since:

A. As to each situation enumerated in paragraphs 39 and 40 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The date when such monopolization commenced and the duration thereof.

(2) A complete list of all "high-class feature pictures" distributed by the distributors, both defendant and non-defendant, which it is claimed the Schine defendants used in effecting such monopolization, giving title, name of distributor and motion picture season in which released.

(3) A complete list of all the "most desirable feature pictures" distributed by the independent distributors, which it is claimed the Schine defendants used in effecting such monopolization, giving title, name of inde-

[fol. 187] pendent distributor and motion picture season in which released.

(4) The names and locations of all theatres and the operators thereof, which were unable to obtain motion picture product because of such alleged monopolization.

B. Define all factors and elements which plaintiff claims make a specific picture a "high-class picture."

C. Define all factors and elements which plaintiff claims make a specific identified picture "more desirable" as distinguished from less desirable independent feature pictures.

XXVII. As to the allegations of paragraph 49 (b) (2) of the complaint:

A. Identify by name and location each theatre in which it is claimed the Schine defendants contracted for "more feature pictures" than the theatre could reasonably exhibit, specifying in each instance:

(1) The date of the contract and the name of the distributor involved.

(2) The product or motion picture season involved.

(3) The extent to which it is claimed such theatre contracted for "more feature pictures" than it could reasonably exhibit, giving the number of pictures which plaintiff claims is reasonably necessary in each situation for the operation thereof.

B. Identify the name and location of each other exhibitor claimed to have been denied the opportunity of contracting for or exhibiting said pictures.

XXVIII. As to the allegations of paragraph 49 (b) (3) of the complaint and paragraph 41 of plaintiff's bill of particulars:

A. As to each theatre enumerated in paragraph 41 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

[fol. 188] (1) Name and location of each Schine theatre in whose favor such unreasonable protection was granted.

(2) The name or names and location of the theatre or theatres over whom such unreasonable protection was granted.

(3) The date when such unreasonable protection was granted and the etxent thereof as to area and period of time.

(4) The period during which such unreasonable protection remained in effect.

(5) The name of the party who demanded such unreasonable protection.

(6) The name of the distributor upon whom such demand was made.

(7) If such demand was in writing, set forth a copy; if oral, state the substance thereof.

(8) Whether it is claimed such unreasonable protection was granted as the result of such demand.

(9) The terms and conditions under which such unreasonable protection was granted by each distributor involved.

XXIV. As to the allegations of paragraph 49 (b)(4) of the complaint and paragraph 42 of plaintiff's bill of particulars:

A. State whether the phrase "'more favorable rental terms" is limited in its application and intention to the price paid for pictures and the price paid for newsreels and short subjects, and to score charges paid on such pictures.

(1) If the phrase "more favorable rental terms" is not so limited, name and define each additional element or factor claimed by plaintiff.

B. As to each instance where it is claimed the Schine defendants demanded and received more favorable rental [fol. 189] terms than other exhibitors in comparable or less favorable situations, state:

(1) Whether such demand was oral or in writing; if oral, state the substance thereof; if in writing, furnish a copy thereof.

(2) The date when and place where such demand was made fo each distributor involved.

(3) The name of each distributor claimed to have given more favorable rental terms to the Schine defendants.

(4) The name of the person making the demand in behalf of the Schine defendants.

(5) To whom on behalf of each distributor involved, said demand was made.

(6) The name and location of each Schine theatre which it is claimed received such "more favorable rental terms."

(7) The name and location of each such other exhibitor's theatre alleged to have received less favorable rental terms, the rental terms demanded by such other exhibitor and the rentals actually received by such other exhibitor.

(8) The rental terms demanded and received by the Schine defendants and the extent to which plaintiff claims they were more favorable.

(9) Each factor or element considered in determining whether a theatre comes within the classification of "comparable or less favorable situations."

XXX. As to the allegations of paragraph 49 (b)(5) of the complaint:

A. State in detail each and every "more advantageous benefits and privileges" referred to in sub-paragraph (5) of paragraph 49 (a) of the complaint.

B. As to each instance in which it is claimed that the Schine defendants demanded and received "more favor- [fol. 190] able rejection privileges and other more advantageous benefits and privileges", state:

(1) Whether such demand was oral or in writing; if oral, state the substance thereof; if in writing, furnish a copy thereof.

(2) The date when and place where such demand was made to each distributor involved.

(3) The name of each distributor claimed to have given "more favorable rejection privileges and other more advantageous benefits and privileges" to the Schine defendants.

(4) The name of the person making the demand on behalf of the Schine defendants.

(5) To whom on behalf of each distributor involved said demand was made.

(6) The name and location of each Schine theatre which received such "more favorable rejection privi-

leges and other more advantageous benefits and privileges."

(7) The name and location of each other exhibitor's theatre alleged to have received less favorable rejection privileges.

(8) The extent to which plaintiff claims the rejection privileges and other benefits and privileges demanded and received by the Schine defendants, were more favorable and advantageous.

XXXI. As to the allegations of paragraph 49 (b)(6) of the complaint:

A. State the nature of each claimed privilege or advantage referred to in said sub-paragraph (6) of said paragraph of the complaint, the granting of which by the distributors was induced through entertainment, gifts and favors to such distributors' representatives.

[fol. 191] B. Identify each instance of claimed privilege or advantage received by the Schine defendants through entertainment, gifts and favors, and state:

(1) The name and position of each representative who it is claimed has been tendered entertainment, gifts and favors by said defendants.

(2) The time and place where each such representative was entertained or tendered gifts and favors.

(3) The sort of entertainment, gifts and favors tendered each such representative.

(4) The name of the agent or agents, if any, of the Schine defendants, who entertained or tendered gifts and favors to each representative of each distributor involved.

XXXII. As to the allegations of paragraph 49(c) of the complaint and paragraph 43 of plaintiff's bill of particulars:

A. Identify each theatre by name and location alleged to have been acquired by the Schine defendants for the purpose of closing or demolishing same or otherwise eliminating its competition as a motion picture theatre, stating as to each:

(1) The date when such theatre was acquired by the Schine defendants.

(2) The date when such theatre was closed or demolished or otherwise eliminated.

(3) The name of the exhibitor operating such theatre prior to acquisition by the Schine defendants.

XXXIII. As to the allegations of paragraph 49(c) (1) of the complaint and paragraph 45 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 45 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

[fol. 192] (1) The date when said theatre was first closed.

(2) The period of time during which said theatre remained closed.

(3) The date when it is claimed that the Schine defendants were given an indication that another exhibitor intended to open a theatre in said town.

(4) The nature of such indication.

(5) The manner in which said indication was communicated to the Schine defendants.

(6) Whether the Schine defendants actually opened said theatre or announced the opening thereof.

(7) The date upon which said Schine defendants opened such theatre or announced the opening thereof.

(8) Each instance, if any, in which it is claimed that the Schine defendants announced the opening of a closed theatre as alleged in said paragraph, and thereafter failed to open the same.

XXXIV. As to the allegations of paragraph 49 (c) (2) and (3) of the complaint and paragraph 46 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 46 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, state:

(1) The date of each such announcement.

(2) The manner in which it is claimed such announcement was made.

(3) The name of the person making such announcement on behalf of the Schine defendants.

(4) The date when it is claimed each such theatre site, or interest in theatre site, was acquired by the Schine defendants.

B. As to each "indication that another exhibitor intends to open a theatre in a Schine town" as alleged in said sub-paragraphs (2) and (3) of said paragraph 49, state:

[fol. 193] (1) The Schine town involved.

(2) The date when such "indication" was given.

(3) The manner or method used by such other exhibitor in giving such "indication".

(4) The manner or method by which it is claimed the Schine defendants acquired knowledge of such "indication" or that it was communicated to them.

(5) The name of such other exhibitor who is claimed to have given such "indication".

XXXV. As to the allegations of paragraph 49 (c) (4) of the complaint and paragraph 47 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 47 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed that the Schine defendants communicated with the distributors, as alleged in said sub-paragraph, state as to each such communication:

(1) The date of such alleged communication.

(2) The name of the distributor or distributors with whom the Schine defendants are alleged to have communicated and the name of the person receiving such communication in behalf of such distributor.

(3) Whether such communication was oral or in writing; if in writing, furnish a copy thereof; if oral,

state the substance thereof.

(4) The name of the person claimed to have made the communication in behalf of the Schine defendants.

(5) Specify the feature pictures and run claimed to have been reserved by the Schine theatres.

(6) Specify the product, feature pictures or run which would normally have been available to such other exhibitor.

(7) Specify the product and run of which such other exhibitor is claimed to have been deprived, the date [fol. 194] when such deprivation commenced and the period during which such deprivation continued.

(8) If it is claimed that such feature pictures and run were reserved pursuant to a written contract or contracts, set forth copies or identify the same.

B. As to each alleged indication as described in said sub-paragraph of the complaint, state:

(1) The name of the other exhibitor and the town involved.

(2) The nature of the indication or method used in giving same.

(3) The manner in which said indication is claimed to have been communicated to the Schine defendants.

(4) The date claimed to have been received by the Schine defendants.

(5) If such indication was communicated to the Schine defendants in writing, set forth copies; if oral, state the substance of same.

XXXVI. As to the allegations of paragraph 49 (c) (5) of the complaint and paragraphs 48, 49 and 50 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraphs 48, 49 and 50 of the bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed that the Schine defendants interfered with arrangements of other exhibitors, as alleged in said sub-paragraph of the complaint, state as to each such instance:

(1) The name of the exhibitor and the town affected.

(2) The nature of the arrangements and extent to which negotiations are claimed to have progressed.

(3) The names and addresses of the third parties with whom such negotiations were allegedly being conducted.

[fol. 195] (4) The date when it is claimed the Schine defendants interfered in such negotiations and arrangements.

(5) The manner or method used by the Schine defendants in such interference.

(6) The names of the persons acting in behalf of the Schine defendants in such alleged interference.

(7) Each overt act which plaintiff will rely upon as constituting such alleged interference.

XXXVII. As to the allegations of paragraph 44 of the bill of particulars:

A. Specify each overt act on the part of any distributor which plaintiff will rely on as constituting participation by such distributor in the doing of the acts mentioned and described in paragraph 49 (c), sub-paragraphs (1), (2), (3) and (5) of the complaint, giving in each instance:

(1) The name of the distributor involved.

(2) The name of the person claimed to have acted in behalf of such distributor.

(3) The date when and place where each act took place.

(4) If a writing was used in or as part of commission of said act, set forth a copy.

(5) If such act is claimed to have culminated in a writing, set forth a copy.

XXXVIII. As to the allegations of paragraph 50 of the complaint and paragraph 51 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 51 of the plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed other exhibitors are "systematically excluded from the opportunity to procure high-class pictures under fair competitive conditions on first or preferred run", state:

[fol. 196] (1) The exact date on which such exhibitor was so excluded.

(2) The exact period of time during which such exclusion continued.

(3) The product by season and distributor which it is claimed each such exhibitor was systematically excluded from procuring.

(4) The title of each "high-class picture" which such exhibitor was so excluded from procuring.

B. State in detail each and every factor and element constituting "fair competitive conditions" in each of such instances:

(1) State as to each instance the "local competitive factors" which plaintiff will claim should have dictated the licensing of the product, so withheld, to such competing theatre under "fair competitive conditions" and "local competitive factors."

XXXIX. As to the allegations of paragraph 51 of the complaint and paragraph 52 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 52 of the plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which it is claimed that exhibitors are being "systematically relegated to an inferior position" as described in paragraph 51 of the complaint:

(1) State the run and position such theatre was claimed to have had prior to acquisition by the Schine defendants of a competing theatre.

(2) State the run and position to which such theatre is claimed to have been relegated after acquisition by the Schine defendants of a competing theatre.

(3) State in what respects the present run and position differs from the prior run and position of such theatre.

[fol. 197] (4) Specify each instance in which it is claimed that such other exhibitor's theatre is as fine as or superior to the competing Schine theatre, giving each element or factor used as part of the basis of comparison.

B. Specify each instance in which it is claimed such other exhibitor was denied product upon first or preferred run regardless of the price offered by such exhibitor, giving in each instance:

(1) The name of the distributor involved.

(2) The season's product denied on first or preferred run.

(3) The date of the offer by such other exhibitor and the date of denial by the distributor involved.

(4) If the offer was in writing set forth a copy; if oral, state the substance thereof.

(5) In each instance the price offered by such exhibitor.

XL. As to the allegations of paragraph 52 of the complaint and paragraphs 53 and 54 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraphs 53 and 54 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which exhibitors were allegedly forced out of business and caused to sustain losses, etc. as described in paragraph 52 of the complaint, state:

(1) The name and location of each theatre operated by other exhibitors claimed to have been forced out of business or compelled to dispose of their theatres.

(2) The date when such exhibitor was forced out of business or compelled to dispose of his theatre or theatres.

(3) To whom such theatres were disposed of.

(4) Whether such theatres are presently in existence and operating.

[fol. 198] B. With respect to each exhibitor claimed to have sustained losses or reduced revenue, state:

(1) The amount of losses or reduced revenue claimed to have been sustained, as well as the profits claimed in each year of operation by such other exhibitor.

C. As to the combinations of the distributors with the Schine defendants, as alleged in said paragraph 52 of the complaint, state:

(1) The time when and place where any distributor first so combined with the Schine defendants.

(2) The manner in which each distributor so combined.

(3) The terms on which each distributor became a member of the alleged combination.

(4) The means agreed upon for carrying out the alleged combination.

(5) If the said combinations are evidenced by writings, set forth copies thereof; if oral, state the substance of each said combination.

(6) The name of the agent or agents acting on behalf of each distributor in entering into such combination.

XLI. As to the allegations of paragraph 53 of the complaint:

A. Identify each of the "benefits of free enterprise and open competition" which plaintiff claims has been denied to the public in Schine "closed towns."

B. Identify each of the "benefits of free enterprise and open competition" which plaintiff claims is denied to the public in other "Schine towns."

C. State whether it is claimed that the public in said so-called "closed towns" is compelled to pay higher admission prices than is the public in comparable other towns; if so, furnish a list of such towns in which it is claimed that [fol. 199] the public enjoys more favorable admission prices than in the so-called "closed Schine towns."

XLII. As to the allegations of paragraph 54 of the complaint and paragraph 55 of plaintiff's bill of particulars:

A. As to each instance enumerated in paragraph 55 of plaintiff's bill of particulars, and any others which may have come to plaintiff's knowledge since, in which individuals are claimed to have been denied the right to engage in the business of exhibiting motion pictures as alleged in paragraph 54 of the complaint, state:

(1) Each factor or element constituting a "fair competitive basis."

(2) In what respect the competitive situation in each of the towns specified, fails to approximate the standard claimed in A(1) supra.

(3) Describe in detail the competitive situation existing in each of the towns specified, wherein plaintiff claims that individuals were denied the right of engaging in the business of exhibiting motion pictures.

XLIII. With respect to the answers to each of the interrogatories propounded herein and each instance identified, in compliance therewith, plaintiff is required to furnish:

A. The identity and address of each person having knowledge of relevant facts, tending to establish the same in whole or in part, and with respect to each person state the relevant facts of which he is claimed to have knowledge.

B. Describe and state the location of each document containing relevant facts tending to establish such charge in whole or in part.

C. If plaintiff intends to establish such charge in whole or in part as a conclusion or inference to be drawn in whole or in part, from acts, omissions, practices, admissions or [fol. 200] other facts, describe and state the location of each document contained, and state the identity and location of each person having knowledge of such acts, omissions, practices, admissions or other facts, indicating such facts and each person having knowledge thereof, and identify each defendant to which said facts relate.

As to any of the foregoing interrogatories or parts thereof, as to which plaintiff after answering, acquires additional knowledge or information, said defendants ask that from

time to time plaintiff serve such further answers to such interrogatories within thirty days after acquiring such additional knowledge or information, and in any event not less than thirty days before the commencement of the trial herein.

Dated: New York, N. Y., September 12th, 1941.

Willard S. McKay, 630 Fifth Avenue, New York, N. Y.; Penney & Penney, 1550 Rand Building, Buffalo, N. Y. Solicitors for Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine-Lexington Corporation, Chesapeake Theatres Corporation, J. Meyer Schine, Louis W. Schine and John A. May.

To: George L. Grobe, Esq., United States Attorney, Western District of New York, Buffalo, N. Y.

[fol. 201] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWERS OF THE PLAINTIFF, UNITED STATES OF AMERICA, TO INTERROGATORIES PROPOUNDED BY THE DEFENDANT EXHIBITORS

Now comes the United States of America, plaintiff herein, and for answer to the interrogatories heretofore propounded to it by the defendant exhibitors states as follows:

Plaintiff considers many of the interrogatories answered below to be objectionable as a matter of law, but in order to avoid argument and delay it has determined to answer them to the best of its ability rather than argue the question of their propriety.

I A & B

With respect to Interrogatories I A and B plaintiff states that it does not have the knowledge required to answer these interrogatories.

I C

For answer to Interrogatory I C plaintiff states that the factor which determines the character of a picture as a

"first class picture" is its value as a box office attraction, that is, its ability to attract patrons to its showings.

[fol. 202] II A (1)

For answer to Interrogatory II (A) (1) plaintiff states that it does not have knowledge of all distributors embraced within the words "other distributors who are not defendants herein." It believes, however, that among them are the following:

Monogram Pictures Corp.
1270 Sixth Avenue
New York, N. Y.
Republic Pictures Corp.
1776 Broadway
New York, N. Y.

II A (2)

With respect to Interrogatory II (A) (2) plaintiff states that it does not have the knowledge required to answer this interrogatory.

II A (3)

For answer to Interrogatory II (A) (3) plaintiff states that in order successfully to operate a first-class theatre in any of the Schine towns, an exhibitor must be able to exhibit from 104 to 156 "satisfactory or suitable" features each year.

II A (4)

For answer to Interrogatory II (A) (4) plaintiff states that in order successfully to operate a first-class theatre in any of the Schine towns an exhibitor must be able to exhibit from 104 to 208 feature pictures distributed by the major distributors each year. Plaintiff further states that it does not have the knowledge required to answer that part of Interrogatory II (A) (4) which relates to each Schine town.

[fol. 203] II B

With respect to Interrogatory II B plaintiff states that it does not have the knowledge required to answer this interrogatory.

II C

For answer to Interrogatory II C plaintiff states that it does not know the identity or location of each person having knowledge of relevant facts tending to establish that in order to operate successfully a "first-class theatre" in any of the "Schine towns" an exhibitor must be able to exhibit a substantial number of feature pictures distributed by the eight major distributors each year. Plaintiff believes, however, that all persons engaged in operating motion picture theatres in such towns and all employees of defendants engaged in negotiating licenses for the exhibition of films therein have such knowledge.

III A and B (1 to 5) and (7 to 8)

For answer to Interrogatories III A and B (1 to 5) and (7 to 8) plaintiff states that it is unable to set forth the details requested therein with respect to the alleged combinations and conspiracies with any more particular-ly than has already been stated in its complaint and bill of particulars.

III B (6)

For answer to Interrogatory III B (6) plaintiff states it is advised that the following parties have been injured by the monopolies, combinations and conspiracies alleged in the complaint:

John Bahas	Ashland, Ohio
Bert Bickert	Ashland, Ohio
Henry Bieberson	Athens, Ohio
Michael Boumansour	Malone, N. Y.
[fol. 204] Murray Briskin	Homer, N. Y.
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Ural Buck	Fostoria, Ohio
Nat Charnas	Bucyrus, Ohio
Phillip Charnas	Bucyrus, Ohio
William Clark	Waddington, N. Y.
Price Coomer	Corbin, Ky.
E. R. Custer	Athens, Ohio
Henry Damm	Bellefontaine, Ohio
C. L. Dasher	Van Wert, Ohio

Louis De Pillo	Geneva, N. Y.
Richard De Toto	Geneva, N. Y.
Chas. E. Dickinson, Jr.	Lockport, N. Y.
Clarence A. Dopp	Frankfort, N. Y.
Essick & Fine	Medina, Ohio
Thomas G. Evans	Van Wert, Ohio
Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, N. Y.
Paul Fennyvessy	Rochester, N. Y.
Max Fogel	Rochester, N. Y.
Morris Gaby	Corning, N. Y.
Frederick Gerber	Corning, N. Y.
Chas. Girard	Tupper Lake Junction, N. Y.
Theodore Gutilla	Bellefontaine, Ohio
Frank Hiltz	Norwalk, Ohio
R. T. Kemper	Shelby, Ohio
Morris Kronick	Amsterdam, N. Y.
Emerson Long	Mt. Vernon, Ohio
Fred Mausert	Glens Falls, N. Y.
Chas. R. Mitchell	Barbourville, Ky.
Milton Mooney	Bellefontaine, Ohio
Mr. & Mrs. Harry Morse	Penn Yan, N. Y.
Carl B. Moore	Van Wert, Ohio
[fol. 205] M. K. Murphy	Corbin, Ky.
B. Ohmann	Lyons, N. Y.
A. Papayanakos	Canton, N. Y.
Mrs. C. Perriello	Clyde, N. Y.
C. F. Pfister	Troy, Ohio
Robert I. Pierce	Ilion, N. Y.
Reliance Theatres Inc.	Lockport, N. Y.
Eli Rosenbaum	Ogdensburg, N. Y.
George Rosenbaum	Carthage, N. Y.
Harry Schwartz	Lexington, Ky.
Harry N. Savitt	Tupper Lake Junction, N. Y.
G. C. Scott	Corbin, Ky.
W. C. Smalley	Norwich, N. Y.
Newton K. Smith	Glens Falls, N. Y.
Katherine Thompson	Rochester, N. Y.
Wm. Tishkoff	Rochester, N. Y.
Helen Ulman	Salisbury, Md.
Peter C. Vournakis	Watertown, N. Y.
H. P. Wallace	Auburn, N. Y.
W. J. Ward	Pikeville, Ky.
Thos. Warne	Little Falls, N. Y.

Frank C. Whitney	Ilion, N. Y.
Wm. Wood	Little Falls, N. Y.
Ernest J. Wolfe	Lowville, N. Y.
L. E. Quinlan	Chateaugay, N. Y.
Clarke Young	Bowling Green, Ohio

III C

For answer to Interrogatory III C plaintiff states that the following were the exhibitors injured in the situations set forth in paragraph 4 of plaintiff's bill of particulars:

Theatre	Location	Exhibitor
Strand	Ogdensburg, N. Y.	Eli Rosenbaum, A. Papayanakos and William Clark
[fol. 206]		
Capitol	Newark, N. Y.	Burton C. Ohmann
Strand	Delaware, Ohio	John Buchman
Strand	Hudson Falls, N. Y.	N. K. Smith and Fred Mausert
Rialto	Lockport, N. Y.	Chas. Dickinson and Reliance Theatres Inc.
Strand	Carthage, N. Y.	Geo. Rosenbaum
Malone	Malone, N. Y.	Michael Boumansour and L. E. Quinlan
Vine	Mt. Vernon, Ohio	Emerson Long
Forum	Norwalk, Ohio	(Joseph Felter and (Frank Hilts
Colonial	Norwich, N. Y.	William C. Smalley
Van Wert	Van Wert, Ohio	(Carl B. Moore and (Thomas G. Evans

IV A

For answer to Interrogatory IV A plaintiff states that it is unable to set forth the information requested therein with any more particularity than has already been stated in its complaint.

IV B

For answer to Interrogatory IV B plaintiff states that the words "uniformly granted" as used in paragraph 46 of the complaint mean that all of the defendant distributors granted the privileges, preferences, and advantages in question to the exhibitor defendants and that each of them granted said privileges, preferences, and advantages in a

similar manner. Plaintiff further states that all of the eight major distributors have "uniformly granted" the privileges referred to but it does not claim that they have so granted said privileges as the result of any agreement among them.

[fol. 207]

V

With respect to Interrogatory V plaintiff states that it does not have the knowledge required to answer said interrogatory.

VI

For answer to Interrogatories VI A and B plaintiff states that it is unable to define and describe the meaning of the words "local competitive basis" with any more particularity than that contained in its complaint and bill of particulars.

With respect to Interrogatories VI A (1-2), C, and D, plaintiff states that it does not have the knowledge required to answer said interrogatories.

VII

With respect to Interrogatory VII plaintiff states that it does not have the knowledge required to answer said interrogatory.

VIII

With respect to Interrogatory VIII plaintiff states that it does not have the knowledge required to answer said interrogatory.

IX

For answer to that part of Interrogatory IX A which requests a statement as to the amount of clearance granted in each instance in which it is claimed that unreasonable protection has been granted to a Schine theatre, plaintiff states as follows:

[fol. 208]

Name and Location of Theatre Granted Clearance	Name and Location of Theatre Against Which Clearance Taken	Amount of Clearance Plaintiff is Advised was Taken
State, Cortland, N. Y.	Town Hall, Homer, N. Y.	30 days
Temple, Cortland, N. Y.	Town Hall, Homer, N. Y.	30 days
State, Cortland, N. Y.	Corona, Groton, N. Y.	30 days
Temple, Cortland, N. Y.	Corona, Groton, N. Y.	30 days
Geneva, Geneva, N. Y.	State, Waterloo, N. Y.	At least 65 days
Regent, Geneva, N. Y.	State, Waterloo, N. Y.	At least 65 days
Strand, Seneca Falls, N. Y.	State, Waterloo, N. Y.	30 days
State, Tupper Lake, N. Y.	Lyric, Tupper Lake Junction, N. Y.	60 days
Capitol, Newark, N. Y.	Ohmann, Lyons, N. Y.	30 days
Strand, Ogdensburg, N. Y.	American, Canton, N. Y.	30 days prior to 1938–39 season and 14 days since then
Capitol, Newark, N. Y.	Playhouse, Clyde, N. Y.	30 days
Liberty, Herkimer, N. Y.	Capitol, Ilion, N. Y.	30 days, later reduced to 10 days
Schine Theatres in Gloversville, N. Y.	Smalleys, Johnstown, N. Y.	45 days
Rialto, Little Falls, N. Y.	Smalley's Dolgeville, N. Y.	30 days
Rialto, Little Falls, N. Y.	Smalley's, Fort Plain, N. Y.	14 days
Rialto, Little Falls, N. Y.	Smalley's, St. Johnsville, N. Y.	30 days
Oneonta, Oneonta, N. Y.	Smalley's, Delphi, N. Y.	30 days
Palace, Oneonta, N. Y.	Smalley's, Cooperstown, N. Y.	14 days
Colonial, Norwich, N. Y.	Smalley's, Sidney, N. Y.	14 days
Rialto, Little Falls, N. Y.	Hippodrome, Little Falls, N. Y.	90–120 days prior to 1936–37
Schine Theatres in Gloversville, N. Y.	Star, Northville, N. Y.	30 days
Liberty, Herkimer, N. Y.	Poland, Poland, N. Y.	1–7 days

[fol. 209]

Liberty, Herkimer, N. Y.	Hollywood, Frankfort, N. Y.	At least 40 days
Capitol, Ilion, N. Y.	Hollywood, Frankfort, N. Y.	30 days
Schine Second-Run Theatres In Watertown, N. Y.	Strand, Watertown, N. Y. Liberty, Watertown, N. Y.	60 days prior to Sept. 1939
Malone, Malone, N. Y.	Palace, Fort Covington, N. Y.	30 days
Massena, Massena, N. Y.	Palace, Fort Covington, N. Y.	30 days on all products except Columbia
Strand, Ogdensburg, N. Y.	Colonial, Waddington, N. Y.	30 days
Pontiac, Ogdensburg, N. Y.	Colonial, Waddington, N. Y.	30 days
Massena, Massena, N. Y.	Colonial, Waddington, N. Y.	30 days on all products except Columbia
Malone, Malone, N. Y.	Ideal, Chateaugay, N. Y.	30–60 days
Schine First-Run Theatres in Watertown, N. Y.	Avalon, Lowville, N. Y.	14 days
Geneva, Geneva, N. Y.	Elmwood, Penn Yan, N. Y.	30 days prior to 1936
Regent, Geneva, N. Y.	Elmwood, Penn Yan, N. Y.	30 days prior to 1396
Schine Theatres in Corbin, Ky.	Mitchell, Barbourville, Ky.	14 days
Schine Theatres in Van Wert, Ohio	Star, Delphos, Ohio Capitol, Delphos, Ohio	Unknown to plaintiff
Schine Theatres in Piqua Ohio	Theatres in Troy, Ohio	Unknown to plaintiff

With respect to the remainder of Interrogatory IX plaintiff states that it does not have the knowledge required to answer said interrogatory.

[fol. 210] X A & C

For answer to Interrogatories X A and C plaintiff states that in addition to those theatres listed in paragraph 14 of the plaintiff's bill of particulars, it is informed that the following exhibitors operating the theatres indicated have paid higher film rentals than comparable Schine theatres:

Name of Exhibitor	Name of Theatre	Location of Theatre
Harry Schwartz	Opera House	Lexington, Ky.
Grover C. Scott	Margie Grand Theatre	Harlan, Ky.
W. J. Ward	Waddington Theatre	Pikeville, Ky.
Howard C. Carroll	Strand Theatre	Rochester, N. Y.
Max Fogel	Webster Theatre	Rochester, N. Y.
Frederick Gerber	Palace Theatre	Corning, N. Y.
Wm. Tishkoff	Murray Theatre	Rochester, N. Y.
Katherine Thompson	Dixie Theatre	Rochester, N. Y.
Katherine Thompson	Cameo Theatre	Rochester, N. Y.
Carl B. Moore	Ohio Theatre	Van Wert, Ohio

Plaintiff does not have the knowledge required to furnish any of the other information called for by Interrogatories X A and C.

X B

For answer to Interrogatory X B plaintiff states that it is unable to set forth the information called for with any more particular-ly than that already contained in its complaint.

XI

With respect to Interrogatory XI plaintiff states that it does not have the knowledge required to answer said interrogatory.

XII

With respect to Interrogatory XII plaintiff states that it does not have the knowledge required to answer said interrogatory.

[fol. 211] XIII A, B (2-4), & D

With respect to Interrogatories XIII A, B (2-4), and D plaintiff states that it does not have the knowledge required to answer said interrogatories.

XIII B (1)

For answer to Interrogatory XIII B (1) plaintiff states that the United States Census lists the following 1930 and 1940 populations for the towns enumerated in paragraph 18 of the plaintiff's bill of particulars:

Town	1930 population	1940 population
Ashland, Ohio	26,867	29,785
Athens, Ohio	44,175	46,166
Ballston Spa, N. Y.	4,591	4,443
Bath, N. Y.	4,015	4,696
Bellefontaine, Ohio	9,543	9,808
Bucyrus, Ohio	10,027	9,727
Cambridge, Maryland	8,544	10,102
Canandaigua, N. Y.	7,541	8,321
Carthage, N. Y.	4,460	4,207
Corbin, Ky.	8,036	7,893
Cortland, N. Y.	15,043	15,881
Easton, Maryland	4,092	4,528
Fostoria, Ohio	12,790	13,453
Geneva, N. Y.	16,053	15,555
Gloversville, N. Y.	23,099	23,329
Hudson Falls, N. Y.	6,449	6,654
Hurlock, Maryland	765	800
Ilion, N. Y.	9,890	8,927
Kent, Ohio	8,375	8,581
Laurel, Delaware	2,542	2,884
Little Falls, N. Y.	11,105	10,163
Lockport, N. Y.	23,160	24,379
Milford, Delaware	3,719	4,214
Mount Vernon, Ohio	9,370	10,122
[fol. 212]		
Newark, N. Y.	7,649	9,646
Norwalk, Ohio	7,776	8,211
Norwich, N. Y.	8,378	8,694
Ogdensburg, N. Y.	16,915	16,346
Oneonta, N. Y.	12,536	11,731
Paris, Ky.	6,204	5,308
Perry, N. Y.	4,231	4,468
Ravenna, Ohio	8,019	8,538
Richmond, Ky.	6,495	7,335
Salamanca, N. Y.	9,577	9,011
Saranac Lake, N. Y.	8,020	7,138
Seneca Falls, N. Y.	6,443	6,452
Tiffin, Ohio	16,428	16,102

XIII C

For answer to Interrogatory XIII C plaintiff states that it is unable to itemize, define and describe the term "local competitive factors" with any more particularity than that contained in its complaint and bill of particulars.

XIV A (1) & (2)

For answer to Interrogatories XIV A (1) and (2) plaintiff states that it is unable to set forth the information requested with any more particularity than that with which the information has already been stated in the complaint and bill of particulars.

XIV A (3)

With respect to Interrogatory XIV A (3) plaintiff states that it does not have the knowledge required to answer this interrogatory.

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XV

With respect to Interrogatory XV plaintiff states that it does not have the knowledge required to answer this interrogatory.

XVI, XVII & XVIII

With respect to Interrogatories XVI, XVII and XVIII plaintiff states that it does not have the knowledge required to answer these interrogatories.

XIX A & C

With respect to Interrogatories XIX A and C plaintiff states that it does not have the knowledge required to answer said interrogatories.

XIX B

With respect to Interrogatory XIX B plaintiff states that it is unable to set forth the information requested with any more particularity than that already contained in its complaint and bill of particulars.

XX to XXVII inclusive

With respect to Interrogatories XX to XXVII inclusive plaintiff states that it does not have the knowledge required to answer these interrogatories.

XXVIII

With respect to Interrogatories XXVIII A (1) and (2) and that part of XXVIII A (3) which relates to "period of time," defendants are referred to plaintiff's answer to Interrogatory IX A above.

With respect to the remainder of Interrogatory XXVIII plaintiff states that it does not have the knowledge required to answer said interrogatory.

[fol. 214]

XXIX A

With respect to Interrogatory XXIX A plaintiff states that it is unable at this time to limit the term "more favorable rental terms" with any more particularity than that already contained in its complaint and bill of particulars.

XXIX B

With respect to Interrogatory XXIX B plaintiff states that it does not have the knowledge required to answer said interrogatory.

XXX A

With respect to Interrogatory XXX B plaintiff states that it is unable at this time to define the term "more favorable rejection privileges and other more advantageous benefits and privileges" with the particularity requested by this interrogatory.

XXX B

With respect to Interrogatory XXX B plaintiff states that it does not have the knowledge required to answer said interrogatory.

XXXI A

With respect to Interrogatory XXXI A plaintiff states that it is unable at this time to set forth the nature of each claimed privilege or advantage referred to.

XXXI B

With respect to Interrogatory XXXI B plaintiff states that it does not have the knowledge required to answer this interrogatory.

XXXII to XLII inclusive

With respect to Interrogatories XXXII to XLII inclusive, plaintiff states that it does not have the knowledge required to answer these interrogatories.

[fol. 215] XLIII

With respect to Interrogatory XLIII plaintiff states that it does not have the knowledge required to answer this interrogatory except that it is possible that the following individuals may be called by it as witnesses:

Thomas Ayre	Seaford, Delaware
John Bahas	Ashland, Ohio
Bert Bickert	Ashland, Ohio
Henry Bieberson	Athens, Ohio
Henry Bieberson	Delaware, Ohio
Michael Boumansour	Malone, N. Y.
Murray Briskin	Homer, N. Y.
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Ural Buck	Fostoria, Ohio
Nat Charnas	Bucyrus, Ohio
Phillip Charnas	Bucyrus, Ohio
William Clark	Waddington, N. Y.
Price Coomer	Corbin, Ky.
Price Coomer	Harlan, Ky.
E. R. Custer	Athens, Ohio
Henry Damm	Bellefontaine, Ohio
C. L. Dasher	Van Wert, Ohio
Louis De Pillo	Geneva, N. Y.
Richard De Toto	Geneva, N. Y.
Richard De Toto	Seneca Falls, N. Y.
Chas. E. Dickinson, Jr.	Lockport, N. Y.
Clarence A. Dopp	Frankfort, N. Y.
Essick & Fine	Medina, Ohio
Thomas G. Evans	Van Wert, Ohio
Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, N. Y.
Paul Fennyvessy	Rochester, N. Y.

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Max Fogel	Rochester, N. Y.
Morris Gaby	Corning, N. Y.

Frederick Gerber	Corning, N. Y.
Chas. Girard	Tupper Lake Junction, N. Y.
Theodore Gutilla	Bellefontaine, Ohio
Reese Harrington	Harrington, Del.
Frank Hiltz	Norwalk, Ohio
Jack Josey	Oxford, Ohio
R. T. Kemper	Shelby, Ohio
Leo Kessel	Lancaster, Ohio
Morris Kronick	Amsterdam, N. Y.
Max Lefkowich	Wooster, Ohio
Emerson Long	Mt. Vernon, Ohio
Fred Mausert	Glens Falls, N. Y.
Chas. D. Mervis	Oxford, Ohio
Chas. R. Mitchell	Barbourville, Ky.
Milton Mooney	Bellefontaine, Ohio
Carl B. Moore	Van Wert, Ohio
Mr. & Mrs. H. C. Morse	Penn Yan, N. Y.
E. P. Mott	Wooster, Ohio
M. K. Murphy	Corbin, Ky.
B. Ohmann	Lyons, N. Y.
A. Papayanakos	Canton, N. Y.
Mrs. C. Perriello	Clyde, N. Y.
C. F. Pfister	Troy, Ohio
Robert I. Pierce	Ilion, N. Y.
Eli Rosenbaum	Ogdensburg, N. Y.
George Rosenbaum	Carthage, N. Y.
J. B. Russell	Maysville, Ky.
Harry Schwartz	Lexington, Ky.
Harry N. Savitt	Tupper Lake Junction, N. Y.
G. C. Scott	Corbin, Ky.
Harold Shreffler	Shelby, Ohio
W. C. Smalley	Norwich, N. Y.
Newton K. Smith	Glens Falls, N. Y.

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Katherine Thompson	Rochester, N. Y.
Wm. Tishkoff	Rochester, N. Y.
Helen Ulman	Salisbury, Md.
Peter C. Vournakis	Watertown, N. Y.
H. P. Wallace	Auburn, N. Y.
W. J. Ward	Bikeville, Ky.
Thomas Warne	Little Falls, N. Y.
Frank C. Whitney	Ilion, N. Y.
Ernest J. Wolfe	Lowville, N. Y.

Wm. Wood	Little Falls, N. Y.
L. E. Quinlan	Chateaugay, N. Y.
Clarke Young	Bowling Green, Ohio
Yudelvitz & Wills	Medina, Ohio

United States of America, Plaintiff, by Seymour F. Simon, Special Attorney.

Duly sworn to by Seymour Simon; jurat omitted in printing.

[fol. 218] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

FURTHER ANSWERS OF THE PLAINTIFF, UNITED STATES OF AMERICA, TO INTERROGATORIES PROPOUNDED BY THE DEFENDANT EXHIBITORS

Now comes the United States of America, plaintiff herein, and for further answers to the interrogatories heretofore propounded to it by the defendant exhibitors and pursuant to the directions of an order of the Court, dated February 27, 1942, with respect to a motion of the Schine defendants under Rule 37 (d), states as follows:

Interrogatory No. I

The plaintiff is not now accurately advised of the exact number of first-class pictures released by the eight major distributors during the past ten years. On the basis of its present knowledge, however, the plaintiff estimates that the number of first-class pictures released by each of the eight major distributors during each of the past ten years was as follows:

Paramount, from 15 to 30	Universal, from 5 to 10
Loew's, from 25 to 40	Fox, from 20 to 35
RKO, from 5 to 15	United Artists, from 5 to 20
Vitagraph, from 20 to 35	Columbia, from 5 to 10

[fol. 219] Interrogatory No. II A (1)

The only information plaintiff has with reference to the names and addresses of "other distributors who are not defendants herein" referred to in paragraph 44 of the com-

plaint, other than those already furnished is that appearing in the Film Daily Yearbook for 1941, a trade publication, which at pages 598, 599, and 605 lists the following distributors other than the ones heretofore named in Buffalo, Cleveland, Cincinnati, and Washington, the towns in which film exchanges serving Schine theatres are located.

Buffalo, New York

Film Classic Exchange, 505 Pearl Street
Pam-o-Film Exchange, Inc., 505 Pearl Street

Cleveland, Ohio

Pioneer Film Exchange, 2300 Payne Ave.
Producers' Releasing Corp., Film Building
Selected Pictures Co., 507 Film Exchange Building

Washington, D. C.

Imperial Pictures, 203 Eye Street, N. W.
Liberty Film Exchange, 925 New Jersey Ave., N. W.
Peerless Distributing Co., 203 Eye Street, N. W.
Producers' Releasing Corp. of Washington, 203 Eye Street, N. W.

Plaintiff has no information as to the nature of the business carried on by any of the above-named distributors, but has no reason to believe that the information appearing in the aforesaid Film Daily Yearbook for 1941 is inaccurate.

Interrogatory No. II B (1)

As used in paragraph 44 of the complaint, the term "first-class theatre" refers to theatres which operate on a policy of ordinarily exhibiting first-class pictures on a first or pre-[fol. 220] ferred run for the particular towns in which the theatre is located.

Interrogatory No. II B (2)

The only theatres presently operated in Schine towns other than Buffalo, New York, and Rochester, New York, by exhibitors other than the defendant exhibitors, which are able to exhibit enough first-class pictures on a first or preferred run for the particular town in which the theatre

is located, to be regarded in the plaintiff's opinion as first-class theatres, as defined in the answer to Interrogatory No. II B (1), are the following:

New Harlan	Harlan, Kentucky
Waddington	Pikeville, Kentucky
New	Salisbury, Maryland
Liberty and either Embassy or Maryland	Cumberland, Maryland

Interrogatory No. VI A

By licensing films on a "local competitive basis" plaintiff means licensing them with due regard for the terms that a local independent exhibitor may offer for the privilege of exhibiting films in his locality as compared with the terms that the Schine defendants may offer for a similar privilege in the same locality. The plaintiff's claim is that the distributors in licensing feature pictures to theatres in Schine towns are forced to disregard local competition because the Schine circuit compels the distributor to meet its demands in competitive situations as a condition of licensing film in the rest of the circuit, where there are no competing theatres. The result of this practice is that even where a local exhibitor may afford an outlet for the distributor's films in his locality which is more desirable and attractive than that offered by the Schine theatre in that locality, the distributor licenses its product to the Schine theatre instead of [fol. 221] the local operator in order to prevent the exclusion of its films from the numerous localities where the Schine theatres have no opposition.

Interrogatory No. VII

The rejection privileges in question have differed in the following respects:

1. The rejection privileges accorded to the Schine defendants have been greater than those accorded to other exhibitors.

2. The Schine defendants have been given a longer period of time in which to exercise their rejection privileges than have independent exhibitors.

Interrogatory No. VIII

The names and locations of theatres which have been refused second or subsequent runs in opposition to a theatre or theatres operated by the Schine defendants are the following:

Theatre	*Location*
Ohio and Opera House	Ashland, Ohio
Strand and Opera House	Bellefontaine, Ohio
Southern	Bucyrus, Ohio
State	Bucyrus, Ohio
Star	Delaware, Ohio
Temple	Medina, Ohio
Memorial	Mt. Vernon, Ohio
Moose	Norwalk, Ohio
Opera House and State	Shelby, Ohio
Ohio	Van Wert, Ohio
Viv	Corbin, Kentucky
New Harlan	Harlan, Kentucky
Waddington	Pikeville, Kentucky
Ulman's	Salisbury, Maryland
[fol. 222]	
Capitol	Auburn, New York
Plaza and Regent	Corning, New York
Hippodrome	Little Falls, New York
Palace	Lockport, New York
Plaza	Malone, New York
Smalley's	Norwich, New York

Interrogatory No. XI

The Schine theatres which it is believed have licensed motion pictures greatly in excess of their reasonable exhibition requirements are the following:

Arcade and Wicomico	Salisbury, Maryland
Strand	Cumberland, Maryland
Princess	Medina, Ohio
Civic and Roxy	Fostoria, Ohio
Forum	Norwalk, Ohio
Van Wert	Van Wert, Ohio
Castamba	Shelby, Ohio
Vine, Lyric and Vernon	Mt. Vernon, Ohio
State and Bucyrus	Bucyrus, Ohio

Strand	Delaware, Ohio
Palace and Opera House	Ashland, Ohio
Kentucky and Hippodrome	Corbin, Kentucky
Margie Grand	Harlan, Kentucky
Ben Ali, Kentucky, State and Strand	Lexington, Kentucky
Bourbon	Paris, Kentucky
Palace, Jefferson, and Strand	Auburn, New York
Rialto and Hi-Art	Lockport, New York
Regent, Rialto and Strand	Amsterdam, New York
Fox, State and Palace	Corning, New York
[fol. 223] Rialto	Little Falls, New York
Malone	Malone, New York
Colonia	Norwich, New York

Interrogatory No. XII

The plaintiff is advised that the distributors indicated below with respect to each theatre granted the advantages referred to in paragraph 47 of the complaint. The theatres listed below are those on behalf of which plaintiff is advised the requests referred to in paragraph 47 of the complaint were made.

Theatre	Town	Distributors
Avon, Olympic, and Palace	Watertown, N. Y.	All major distributors
State and Temple	Cortland, N. Y.	All major distributors
Babcock	Bath, N. Y.	All major distributors
Capitol	Newark, N. Y.	All major distributors
Glove and Hippodrome	Gloversville, N. Y.	All major distributors
Oneonta and Palace	Oneonta, N. Y.	All major distributors
Liberty	Herkimer, N. Y.	All major distributors
Capitol	Ilion, N. Y.	All major distributors
Massena and Rialto	Massena, N. Y.	All major distributors except Columbia
Strand	Seneca Falls, N. Y.	All major distributors
Rialto	Little Falls, N. Y.	All major distributors
Malone	Malone, N. Y.	All major distributors
Colonia	Norwich, N. Y.	All major distributors
Strand and Pontiac	Ogdensburg, N. Y.	All major distributors
Dixie Theatre	Rochester, N. Y.	All major distributors
Riviera Theatre	Rochester, N. Y.	All major distributors

[fol. 224]

Theatre	Town	Distributors
Schine Theatres in Syracuse,	Syracuse, N. Y.	All major distributors
State	Tupper Lake, N. Y.	All major distributors
Rialto and Hi-Art	Lockport, N. Y.	All major distributors
Rialto, Strand and Regent	Amsterdam, N. Y.	All major distributors
Auburn, Jefferson, and Palace	Auburn, N.Y.	All major distributors except Columbia
Fox, State, and Palace	Corning, N. Y.	All major distributors
Geneva and Regent	Geneva, N. Y.	All major distributors
Rialto, Empire, and Paramount	Glens Falls, N. Y.	All major distributors except Paramount
Strand	Hudson Falls, N. Y.	All major distributors except Paramount
Princess Theatre	Medina, Ohio	All major distributors except Columbia
Forum Theatre	Norwalk, Ohio	All major distributors
Castamba Theatre	Shelby, Ohio	All major distributors except Columbia, Universal and United Artists
Civic and Roxy Theatres	Fostoria, Ohio	All major distributors except Fox
Van Wert and Strand Theatres	Van Wert, Ohio	All major distributors
Holland and Strand Theatres	All major distributors Bellefontaine, Ohio	All major distributors
Strand Theatre	Delaware, Ohio	

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Bucyrus and State Theatres	Bucyrus, Ohio	All major distributors except Columbia
Vine, Lyric and Vernon Theatres	Mt. Vernon, Ohio	All major distributors except Columbia
Opera House and Palace	Ashland, Ohio	Unknown
Athena Theatre	Athens, Ohio	Unknown
Ritz and Grand	Tiffin, Ohio	Unknown
Hippodrome and Kentucky	Corbin, Ky.	All major distributors
Ben Ali, Kentucky, State and Strand	Lexington, Ky.	All major distributors
Bourbon Theatre	Paris, Ky.	All major distributors
Liberty Theatre	Pikeville, Ky.	R. K. O., Loew's; Paramount, Fox, and United Artists

Theatre	Town	Distributors
Margie Grand	Harlan, Ky.	Unknown
Arcade and Wicomico	Salisbury, Md.	Paramount and others unknown
Strand	Cumberland, Md.	Warner and others unknown

Interrogatory No. XIX

By the term "desirable product" as used in paragraph 9 (a) (4) of the complaint, plaintiff means product which is successful in attracting patrons to theatres in the Schine towns. By "desirable run" as used in paragraph 49 (a) (4) of the complaint, plaintiff means a first or preferred run in a particular town. Inasmuch as most of the Schine [fol. 226] towns have no more than two theatres, the desirable run in them would of course be the first run.

Interrogatory No. XX

In addition to the situations listed in paragraph 33 of the bill of particulars heretobefore filed,* plaintiff is advised that the Schine defendants announced the proposed construction and opening of a theatre in the neighborhood of another exhibitor in Delaware, Ohio, Bowling Green, Ohio, and Van Wert, Ohio.

In addition to the situations listed in paragraph 34 of the bill of particulars heretofore filed, the plaintiff is advised that the Schine defendants took the following interests in a theatre site in the neighborhood of other exhibitors:

Town	*Nature of Interest*
Delaware, Ohio	Option to buy
Bowling Green, Ohio	Option to buy
Paris, Kentucky	Fee

Plaintiff is not advised of any situations called for by paragraph XXC of the defendants' specification of demands for a bill of particulars other than those heretofore listed in paragraph 35.

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* As used throughout these answers the term "bill of particulars" refers to all bills of particulars which have been filed in this action including the "Supplemental Bill of Particulars" filed on December 4, 1941.

Interrogatory No. XXI

Plaintiff is not advised of any situations called for by paragraph XXI of the defendants' specification of demands for a bill of particulars other than those heretofore listed in paragraph 36 of its bill of particulars.

[fol. 227]

Interrogatory No. XXII

The theatres operated by the Schine defendants which it is believed cut admission prices are the following:

Forum	Norwalk, Ohio
Castamba	Shelby, Ohio
Strand and Van Wert	Van Wert, Ohio
Strand	Delaware, Ohio
Opera House	Ashland, Ohio
Kentucky and Hippodrome	Corbin, Kentucky
Russell	Maysville, Kentucky
State and Bucyrus	Bucyrus, Ohio
Rialto and Hi-Art	Lockport, New York
Malone	Malone, New York
Strand	Seneca Falls, New York
State	Corning, New York
Colonia	Norwich, New York
Rialto	Little Falls, New York
Name of theatre unknown	Lexington, Kentucky

Interrogatory No. XXIII

Plaintiff is unable at the present time to state the names of Schine theatres which resorted to "unusual and costly games and give-aways," as alleged in the paragraph 46 (a) (8) of the complaint. It is believed, however, that there were no theatres other than those listed in response to the Interrogatory No. XXII which resorted to such practices.

Interrogatory No. XXIV

The Schine theatres which have been granted unreasonable clearance are the following:

State	Cortland, New York
Temple	Cortland, New York
Geneva	Geneva, New York

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Regent	Geneva, New York
Strand	Seneca Falls, New York
State	Tupper Lake, New York
Capitol	Newark, New York
Strand	Ogdensburg, New York
Liberty	Herkimer, New York
Glove	Gloversville, New York
Hippodrome	Gloversville, New York
Rialto	Little Falls, New York
Oneonta	Oneonta, New York
Palace	Oneonta, New York
Colonia	Norwich, New York
Capitol	Ilion, New York
Avon and Olympic	Watertown, New York
Malone	Malone, New York
Massena	Massena, New York
Pontiac	Ogdensburg, New York
Viv	Corbin, Kentucky
Van Wert	Van Wert, Ohio

Interrogatory No. XXV

The following are the towns in which it is claimed the Schine defendant have restrained and monopolized the exhibition of motion pictures:

Amsterdam, New York	Glen Falls, New York
Auburn, New York	Gloversville, New York
Bath, New York	Hamilton, New York
Ballston Spa, New York	Herkimer, New York
Canandaigua, New York	Hudson Falls, New York
Carthage, New York	Ilion, New York
Corning, New York	Little Falls, New York
Cortland, New York	Newark, New York
East Rochester, New York	Lockport, New York
Fairport, New York	Malone, New York
Geneva, New York	Massena, New York

[fol. 229]

Norwich, New York	Van Wert, Ohio
Ogdensburg, New York	Wooster, Ohio
Oneonta, New York	Bowling Green, Ohio
Oswego, New York	Corbin, Kentucky
Penn Yan, New York	Lexington, Kentucky
Perry, New York	Maysville, Kentucky

Rochester, New York
Salamanca, New York
Saranac Lake, New York
Seneca Falls, New York
Syracuse, New York
Tupper Lake, New York
Watertown, New York
Whitehall, New York
Mechanicville, New York
Ashland, Ohio
Athens, Ohio
Bellefontaine, Ohio
Bucyrus, Ohio
Delaware, Ohio
Fostoria, Ohio
Granville, New York
Kent, Ohio
Medina, Ohio
Mt. Vernon, Ohio
Norwalk, Ohio
Piqua, Ohio
Ravenna, Ohio
Shelby, Ohio
Tiffin, Ohio
Paris, Kentucky
Richmond, Kentucky
Pikeville, Kentucky
Middlesboro, Kentucky
Cambridge, Maryland
Easton, Maryland
Federalsburg, Maryland
Hurlock, Maryland
St. Michaels, Maryland
Salisbury, Maryland
Cumberland, Maryland
Laurel, Delaware
Milford, Delaware
Appalachia, Virginia
Harlan, Kentucky

[fol. 230] Interrogatory No. XXVI

The following theatres were unable to obtain motion picture product because of the monopolization alleged in paragraph 49 (b) (1) of the complaint:

Strand	Van Wert, Ohio
Ohio	Van Wert, Ohio
Opera House	Bellefontaine, Ohio
Colonial or State	Fostoria, Ohio
Moose	Norwalk, Ohio
State	Bucyrus, Ohio
Southern	Bucyrus, Ohio
State	Shelby, Ohio
Ohio	Ashland, Ohio
Star	Delaware, Ohio
Memorial	Mt. Vernon, Ohio
Temple	Medina, Ohio
Tiffin	Tiffin, Ohio

Viv	Corbin, Kentucky
New Harlan	Harlan, Kentucky
Opera House	Lexington, Kentucky
Ulman's	Salisbury, Maryland
Palace	Lockport, New York
Hippodrome	Little Falls, New York
Plaza	Malone, New York
Orpheum	Amsterdam, New York
Capitol	Auburn, New York
Plaza	Corning, New York
Palace	Corning, New York
Park	Geneva, New York
State	Glens Falls, New York
Liberty	Cumberland, Maryland

The factor which makes a specific picture a high-class picture is its value as a box-office attraction and its quality as entertainment for the general public. The factor which [fol. 231] makes feature pictures distributed by independent distributors "more desirable" as distinguished from "less desirable" is their value as box office attractions and their quality as entertainment for the general public.

Interrogatory No. XXVII

The theatres operated by the Schine defendants which have contracted for more feature pictures than they could reasonably exhibit are the following:

Arcade and Wicimoco	Salisbury, Maryland
Strand	Cumberland, Maryland
Princess	Medina, Ohio
Civic and Roxy	Fostoria, Ohio
Forum	Norwalk, Ohio
Van Wert	Van Wert, Ohio
Castamba	Shelby, Ohio
Vine, Lyric and Vernon	Mt. Vernon, Ohio
State and Bucyrus	Bucyrus, Ohio
Strand	Delaware, Ohio
Palace and Opera House	Ashland, Ohio
Kentucky and Hippodrome	Corbin, Kentucky
Margie Grand	Harlan, Kentucky
Ben Ali, Kentucky, State and Strand	Lexington, Kentucky
Bourbon	Paris, Kentucky

Palace, Jefferson, and Strand	Auburn, New York
Rialto and Hi-Art	Lockport, New York
Regent, Rialto and Strand	Amsterdam, New York
Fox, State and Palace	Corning, New York
Rialto	Little Falls, New York
Malone	Malone, New York
Colonia	Norwich, New York

[fol. 232] Interrogatory No. XXIX B

Plaintiff is unable at the present time to furnish any more information called for by the court's direction with respect to this interrogatory than has already been supplied in its answers to interrogatories X A and C heretofore propounded to the plaintiff by the Schine defendants and in paragraph 14 of its bill of particulars, except that to the aforesaid lists should be added Emerson W. Long, Memorial Theatre, Mt. Vernon, Ohio.

Plaintiff should like to call the attention of the Schine defendants to the fact that it now has in its possession answers to interrogatories filed by defendant Columbia which show film rentals paid in various towns by the Schine defendants and by other exhibitors. It expects that similar interrogatory answers will be filed by the defendants United Artists and Universal within a few days. Plaintiff has not yet examined said interrogatory answers for the purpose of determining the extent and character of discriminatory film rentals they disclose. Plaintiff may, of course, rely on whatever facts may be disclosed by these interrogatory answers.

Plaintiff should also like to call the attention of the Schine defendants to letters dated March 4 directed to Vitagraph, Inc., Paramount Pictures, Inc., RKO Radio Pictures, Inc., Loew's Inc., and Dwight, Harris, Koegel & Caskey, counsel for Twentieth Century-Fox Film Corporation, requesting information with respect to film rentals paid in certain towns. Copies of these letters have been mailed to Mr. McKay and plaintiff may offer proof at the trial of this case with respect to any information requested by the aforesaid letters.

[fol. 233] Interrogatory No. XXX

The only other benefits and privileges received by the Schine defendants which the plaintiff now knows of was

a greater extension of credit, in that the Schine defendants were granted a longer period of time in which to pay for films than were independent exhibitors.

Interrogatory No. XXXI A

Plaintiff does not know at this time the precise nature of the privileges and advantages the defendant exhibitors secured by tendering entertainment, gifts, and favors to representatives of the eight major distributors as alleged in paragraph 49 (b) (6).

Interrogatory No. XXXII

The following theatres have been acquired for the purpose of closing and demolishing them or other theatres operated by the defendant exhibitors and located in the same town:

Palace Theatre	Corning, New York (The State Theatre, Corning, New York, was closed shortly after the Palace was acquired)
State Theatre	Oswego, New York
Hippodrome Theatre	Little Falls, New York
Palace Theatre	Lockport, New York (Shortly after the Palace Theatre was re-acquired in October 1936, the Hi-Art was converted into a part-time operation)
Seneca Theatre	Seneca Falls, New York
Court Theatre	Athens, Ohio
[fol. 234]	
State and Southern Theatres	Bucyrus, Ohio
Star Theatre	Delaware, Ohio
Temple Theatre	Medina, Ohio (Shortly after the acquisition of the Temple Theatre, Medina, Ohio, the Princess Theatre was closed)
Moose Theatre	Norwalk, Ohio
Tiffin Theatre	Tiffin, Ohio

(Shortly after the acquisition of the Tiffin, the Grand Theatre, Tiffin, Ohio, was closed)

Opera House — Bellefontaine, Ohio
Ohio Theatre — Ashland, Ohio
Hollywood Theatre — Maysville, Kentucky
Viv Theatre — Corbin, Kentucky
(Shortly after the acquisition of the Viv Theatre, the Kentucky Theatre was converted into a part-time operation)

Interrogatory XXXIII

Plaintiff is not advised of any situations called for by paragraph XXXIII A of the defendants' specification of demands for a bill of particulars other than those heretofore listed in paragraph 45 of its bill of particulars, except that the Seneca Theatre, Seneca Falls, New York, was incorrectly referred to in the plaintiff's Supplemental Bill of Particulars filed on December 4, 1941, as the Strand Theatre, Seneca Falls, New York, and it is desired to correct paragraph 45 of the aforesaid Supplemental Bill of Particulars accordingly.

[fol. 235] Interrogatory XXXIV A

In addition to the situations listed in paragraph 46 of its bill of particulars, plaintiff is advised that the Schine defendants kept sites in Salamanca, New York, Paris, Kentucky, and Canandaigua, New York, as alleged in paragraph 49 (c) of the complaint.

Interrogatory No. XXXIV B

Plaintiff is advised that exhibitors other than the Schine defendants intended to open theatres in the following Schine towns:

Salamanca, New York
Paris, Kentucky
Canandaigua, New York
Seneca Falls, New York
Norwalk, Ohio
Geneva, New York
Ogdensburg, New York

Interrogatory XXXVI

In addition to the situations referred to in paragraphs 48, 49, and 50 of its bill of particulars, plaintiff is advised that defendant exhibitors attempted to interfere with relations between exhibitors and their lessors with respect to the following theatres:

Castamba	Shelby Ohio
Ohio	Van Wert, Ohio
Opera House	Bellefontaine, Ohio

Plaintiff is further advised that defendant exhibitors interfered with relations between other exhibitors and their financiers and proposed lessors in Cortland, New York, and that they interfered with relations between other exhibitors and their lessors in Hamilton, New York.

[fol. 236] Interrogatory No. XXXVIII

In addition to the situations listed in paragraph 51 of its bill of particulars, plaintiff is advised that Louise Stoll of Tiffin, Ohio, and Harry Schwartz of Paris, Kentucky, have been systematically excluded from the opportunity of procuring high-class pictures under fair competitive conditions on first or preferred runs.

Interrogatory No. XL

Plaintiff is not advised of any situations called for by paragraphs XXXIX and XXXIX B of the defendants' specification of demands for a bill of particulars other than those heretofore listed in paragraphs 53 and 54 of its bill of particulars.

Interrogatory No. XLI

Among the more obvious benefits which result from free enterprise and open competition in a business such as this one are a wider choice with respect to admission prices, features exhibited, runs on which they are shown, and character of the theatres in which they are exhibited than would be available to the public under a monopolistic operation. Monopolistic operation generally results in higher admission prices than those found in competitive situations, and competition provides an incentive toward

improved service to the public which is lacking in towns where there is no opposition.

The plaintiff's theory is that a violation of the Act is shown by proof that free enterprise and open competition have been unreasonably suppressed even without specific proof as to particular benefits which have or have not accrued to the public as a result of competition.

[fol. 237] Interrogatory No. XLII

In addition to the situations listed in paragraph 55 of its bill of particulars, plaintiff is advised that the following individuals have been denied the right of engaging in the business of exhibiting motion pictures in Schine towns:

James Gregory, Shelby, Ohio
Charles V. Martina, Syracuse, New York
Charles Sesonske, Ogdensburg, New York

Interrogatory No. XLIII

Plaintiff has re-examined its prospective list of witnesses and can state that at the present time it expects to call the following:

Thomas Ayre	Seaford, Delaware
John Bahas	Ashland, Ohio
Henry Bieberson	Delaware, Ohio
Micheal Boumansour	Malone, New York
Murray Briskin	Homer, New York
M. Bryer	Bucyrus, Ohio
John Buchman	Delaware, Ohio
Arthur Buck	Fostoria, Ohio
Philip Charnas	Bucyrus, Ohio
William Clark	Waddington, New York
Price Coomer	Harlan, Kentucky
E. R. Custer	Athens, Ohio
C. L. Dasher	Van Wert, Ohio
Louis De Pillo	Geneva, New York
Richard De Toto	Geneva, New York
Richard De Toto	Seneca Falls, New York
Charles E. Dickinson, Jr.	Lockport, New York
Peter Grafiades	Lockport, New York
Clarence A. Dopp	Frankfort, New York
Myer Fine	Cleveland, Ohio
P. E. Essick	Cleveland, Ohio

[fol. 238] Joseph H. Felter	Norwalk, Ohio
Chester Fennyvessy	Rochester, New York
Paul Fennyvessy	Rochester, New York
Max Fogel	Rochester, New York
Morris Gaby	Corning, New York
Robert Gerber	Corning, New York
Charles Girard	Tupper Lake Junction, New York
Theodore Gutilla	Bellefontaine, Ohio
Reese Harrington	Harrington, Delaware
R. T. Kemper	Shelby, Ohio
Leo Kessel	Lancaster, Ohio
Morris Kronick	Amsterdam, New York
Max Lefkowich	Wooster, Ohio
Emerson W. Long	Cadiz, Ohio
Fred Mausert	Glens Falls, New York
Charles R. Mitchell	Barbourville, Kentucky
Milton Mooney	Cleveland, Ohio
Carl B. Moore	Van Wert, Ohio
Mrs. Carl B. Moore	Van Wert, Ohio
Mrs. H. C. Morse	Penn Yan, New York
E. P. Mott	Wooster, Ohio
M. K. Murphy	Corbin, Kentucky
B. Ohmann	Lyons, New York
A. Papayanakos	Canton, New York
Jerry Steele	Oberlin, Ohio
Hubert Whitenack	Corbin, Kentucky
Charles Sesonske	Carthage, New York
Mrs. C. Perriello	Clyde, New York
Robert I. Pierce	Ilion, New York
Eli Rosenbaum	Ogdensburg, New York
George Rosenbaum	Carthage, New York
Harry Schwartz	Lexington, Kentucky
Harry N. Savitt	Tupper Lake Junction, New York
G. C. Scott	Corbin, Kentucky
[fol. 239] Harold Shreffler	Shelby, Ohio
W. C. Smalley	Norwich, New York
Newton K. Smith	Glen Falls, New York
James Gregory	Shelby, Ohio
Katherine Thompson	Rochester, New York
William Tishkoff	Rochester, New York
Helen Ulman	Salisbury, Maryland
Peter C. Vournakis	Watertown, New York
H. P. Wallace	Auburn, New York
W. J. Ward	Pikeville, Kentucky

Thomas Warne	Little Falls, New York
Frank C. Whitney	Ilion, New York
Ernest J. Wolfe	Lowville, New York
Mrs. William Wood	Little Falls, New York
L. E. Quinlan	Chateaugay, New York
T. Neal Howard	Maysville, Kentucky
Harry D. Rumpf	Wyandotte, Michigan
Katherine E. Sheldon	Hamilton, New York
William L. Burke	Hamilton, New York
Leon B. Scott	Harlan, Kentucky
Newell Howard	Salisbury, Maryland
Lawrence Sperry	Mt. Vernon, Ohio
John Ring	Auburn, New York
Charles V. Martina	Syracuse, New York
Charles H. Latham	Norwich, New York
Carl Stambaugh	Shelby, Ohio

WASHINGTON,
District of Columbia, ss:

I, Seymour Simon, being duly swonr, do depose and say that I am a Special Attorney in the Department of Justice and am engaged in the preparation for trial of the case entitled *United States v. Schine Chain Theatres, Inc., et al.*, [fol. 240] now pending in the United States District Court for the Western District of New York.

I have prepared the foregoing interrogatory answers in accord with an order and opinion of the Honorable John Knight dated February 27, 1942, with respect to a motion of the Schine defendants under Rule 37 (d).

It appears from the aforesaid opinion that the purpose of requiring further answers to certain interrogatories was to advise the Schine defendants more fully of the claims which the Government now expects to rely upon at the trial and thus to achieve insofar as possible a simplification of the issues without, however, limiting the Government's proof in any way. I have accordingly attempted to set forth these claims as fully as possible in the foregoing answers, in the light of all the information now in the possession of the Department.

Seymour Simon.

Sworn to and subscribed before me this 5th day of March, 1942. Dorothy J. Heale, Notary Public. (Seal.)

[fol. 241] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SUPPLEMENT TO FURTHER ANSWERS OF THE PLAINTIFF, UNITED STATES OF AMERICA, TO INTERROGATORIES PROPOUNDED BY THE DEFENDANT EXHIBITORS

Now comes the United States of America, plaintiff herein, and for further answers to the interrogatories heretofore propounded to it by the defendant exhibitors, and pursuant to the directions of an order of the Court, dated March 6, 1942, with respect to a motion of the Schine defendants under Rule 37 (d), states as follows:

Interrogatory No. XVIII

The Schine defendants threatened to deprive the following exhibitors of desirable product or run in case of their failure to sell or lease to said defendants the theatres indicated:

Exhibitor	*Theatre*	*Town*
Harold Shreffler	Castamba	Shelby, Ohio
Carl B. Moore	Ohio	Van Wert, Ohio
Leo Kessel	Palace	Lancaster, Ohio

[fol. 242] WASHINGTON,
District of Columbia, ss:

I, Seymour Simon, being duly sworn, do depose and says that I am a Special Attorney in the Department of Justice and am engaged in the preparation for trial of the case entitled *United States v. Schine Chain Theatres, Inc., et al.* now pending in the United States District Court for the Western District of New York. I have prepared the foregoing interrogatory answer in accord with an order and opinion of the Honorable John Knight, dated March 6, 1942, with respect to a motion of the Schine defendants under Rule 37 (d).

I have set forth the matters called for in the foregoing answer on the basis of all the information now in the possession of the Department.

Seymour Simon.

Sworn to and subscribed before me this 17th day of March, 1942. Dorothy J. Heale, Notary Public. (Seal.)

[fol. 243] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

SUPPLEMENT TO FURTHER ANSWERS OF THE PLAINTIFF, UNITED STATES OF AMERICA, TO INTERROGATORIES PROPOUNDED BY THE DEFENDANT EXHIBITORS

Now comes the United States of America, plaintiff herein, and for further answers to the interrogatories heretofore propounded to it by the defendant exhibitors, and pursuant to the directions of an order of the Court, dated April 10, 1942, with respect to a motion of the Schine defendants under Rule 37 (d), states as follows:

INTERROGATORY No. XXXI A

Plaintiff is unable to state the nature of the privileges and advantages the defendant exhibitors secured because it does not have such information. It is informed that an automobile was given by the Schine defendants to a representative of Twentieth Century-Fox Film Corporation but it does not know whether such automobile was given in return for any particular privilege or advantage then received by the Schine defendants, or for the friendship and goodwill of the recipient of the gift.

INTERROGATORY No. XLI

The public in the Schine towns has been denied as wide a choice with respect to admission prices, features exhibited, [fol. 244] runs on which they are shown, and character of the theatres in which they are exhibited as would be available to the public under competitive conditions.

WASHINGTON,
District of Columbia, ss:

I, Seymour Simon, being duly sworn, do depose and say that I am a Special Attorney in the Department of Justice and am engaged in the preparation for trial of the case

entitled *United States v. Schine Chain Theatres, Inc., et al.*, now pending in the United States District Court for the Western District of New York.

I have prepared the foregoing interrogatory answers in accord with an order of the Honorable John Knight dated April 10, 1942, with respect to a renewal of a motion by the Schine defendants under Rule 37 (d).

I have set forth the matters called for in the foregoing answer on the basis of all the information now in the possession of the Department.

Seymour Simon.

Sworn to and subscribed before me this 14th day of April, 1942. Dorothy J. Heale, Notary Public. (Seal.)

[fol. 245] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

REQUEST FOR ADMISSION OF FACTS

Please Take Notice that the defendant in this action requests the plaintiff, for the purposes of this action only, the following facts, subject to all valid objections to the admissibility of such facts as evidence in this action which may be interposed at the trial:

1. For the past thirty years the general, usual and customary method of licensing the exhibition of copyrighted motion picture photoplays in the United States of America, including the states of New York, Ohio, Kentucky, Maryland, Delaware and Virginia, has been and now is on a so-called run basis, to wit: for a first run, to a theatre in a given area with an exclusive right to show the photoplay for the first run for the licensed period, together with a clearance or intervention of time between the end of that exhibition and the next exhibition in said area; for a following run to a theatre (or theatres, if there be more than one such following exhibition in said area) with exclusivity of run together with clearance as against all other subsequent runs, and in like manner with such exclusivity and such clearance down to the last run of said photoplay in said area.

[fol. 246] 2. In order to secure the greater revenue from film rentals in the conduct of the business of producing and distributing motion pictures, it has been usual and customary and is necessary that the distributor agree with its licensees that it will not exhibit or grant a license to exhibit its photoplays for exhibition in conflict with the run licensed the exhibitor or prior to the clearance period agreed upon with the exhibitor.

3. The motion picture industry has developed under the existence of clearance and runs. It is by such a system, with initially large receipts from prior run exhibitions and successive reduction of license charges, that satisfactory revenue can be derived by the producers and distributors, so that costly feature pictures can be made available to the whole public at varying admission prices.

4. In selecting its first or prior run exhibitor in each competitive area, each distributor endeavors to select that customer which will ultimately yield it the greatest revenue having due regard for its past business relations with the customer, the skill and character of the management of the theatre, the size, location, equipment and drawing power of the customer. Each distributor endeavors to license its pictures for successive runs in any given competitive area and to protect each run by the grant of such clearance as in its judgment will yield it the greatest aggregate revenue.

5. There are approximately sixteen thousand theatres exhibiting motion pictures in the United States of America. Each of the distributors named as co-conspirators in the complaint is generally able to service several thousand of these theatres.

6. As a general rule, the negative of each of the motion pictures distributed by the distributors, named as co-conspirators in the complaint, is manufactured at a negative cost (the cost of producing the picture) of from approximately $200,000. to much larger sums. Positive prints [fol. 247] are taken from the negatives of each picture for the purpose of distribution to the motion pictures theatres in the United States, the print cost varying from approximately $150. per print to larger sums.

7. Each distributor named as a co-conspirator in the complaint manufactures approximately 200 positive prints

on the less important photoplays distributed by it, and between 300 and 350 on the more important photoplays.

8. Each distributor named as a co-conspirator in the complaint services all of its accounts in the United States of America with the allotment of prints referred to in the preceding statement of fact.

9. A first class theatre is one which is constituted as such by reason of its physical condition, appointments, seating capacity, manner of operation, extent and character of advertising and admission prices.

10. Of the 17,000 theatres in the United States, a majority are located in towns where there is only one theatre in the town.

11. Of the so-called Schine Theatres, approximately 60% are located in cities or villages with populations under 10,000, and approximately 87% are located in cities or villages with populations under 25,000.

12. Of the 175 cities and villages in New York State having populations between 2,000 and 10,000, Schine has theatres in only 20.

Of the — cities and villages in the state of Ohio having populations between 2,000 and 10,000, Schine has theatres in only 11.

13. It is generally economically unsound and financially impossible to operate more than one theatre in a town having a population under 10,000.

[fol. 248] 14. The Schine defendants built new, modern theatres, to replace or supplement the then existing inadequate theatre facilities in the following towns: Oswego, Cortland, Geneva, Athens, Bucyrus, Mt. Vernon, Norivalle, Bellefontaine, Wooster, Ashland, Paris and Auburn.

15. The Schine defendants, by virtue of the location of their theatres, compete actively in substantially every instance, with other circuits or independents in the same or nearby towns. The transit facilities and wide use of cars in suburban areas is such that people residing there travel great distances to attend the theatre, and go from one town to another with great frequency and in large number.

16. The defendants, by virtue of the diversity of location of their theatres, do not constitute the dominant ele-

ment in any particular geographical area or in any territory in which they operate theatres.

17. It would be utterly impractical for the operators of so-called theatre chains to give up any of their theatre holdings (Hayes argument on presentation of Consent Decree), and they cannot exist under such conditions.

18. The distributor has the right to sell to whom he pleases and under such terms as he pleases, and was so conceded by the government in the Consent Decree.

19. In case of competitive communities, it is quite often necessary that one community be given clearance over another. This is done in order that both the distributor and exhibitor may derive the maximum benefits from each run. "Clearance" means the period of time elapsing between the exhibition of a picture in a given competitive area and the next subsequent exhibition of the same picture in the same area. In the case of clearance it is customary and necessary that the distributor agree with its licensees that it will not exhibit or grant a license to exhibit any photo-[fol. 249] plays for exhibition in conflict with a run already licensed to an exhibitor or prior to the expiration of the clearance period agreed upon with the exhibitor.

20. In selecting its first or prior run exhibitor in each competitive area, each distributor endeavors to select the customer which will yield the greatest revenue, having due regard for its past business relations with the customer, the skill and character of the management of the theatre, and the size, location, appointments and drawing power of the theatre.

21. Each distributor endeavors to license its photoplays for successive runs in each competitive area in such manner and to such theatres as in its opinion will collectively yield it the greatest revenue from that area. Each distributor endeavors to protect each run by the grant of such clearance as in its judgment will yield the greatest aggregate revenue. If the size or character of a community is such that a distributor believes a second or subsequent run will so adversely affect the prior runs as to result over an extended period in a smaller total film rental from the community than the distributor would receive if such second or

subsequent run were not sold, the distributor may reasonably refuse to sell a second or subsequent run.

22. The usual allotment of prints to each of the exchanges or branch offices serving the States of New York, Maryland, Ohio, Delaware, Virginia and Kentucky is approximately eight prints to each exchange for the less important pictures and approximately thirteen prints to each exchange for the more important pictures. With these prints each distributor must service all of the accounts in the territories respectively served by its Washington, Cincinnati, Cleveland, Buffalo and Albany exchanges. It would be physically and economically impossible because [fol. 250] of this print situation to attempt to distribute photoplays on any basis except a stagger run basis.

23. Motion pictures are works of art and are the subject of copyright. They have no uniform or market value, and the revenue which the owner of a copyright can derive from any picture or group of pictures depends upon the ability of the distributor to market them in different situations to the best advantage. The distributor must take all situations in consideration and must impose such conditions, as to run and clearance, as will produce the most revenue.

24. The "quality" of pictures is difficult to guage. When "quality" is referred to in this case, it is box-office appeal rather than the judgment of critics which is referred to, and the tastes of the public vary widely. Pictures which are great box-office attractions in metropolitan centers may not do well in small country towns and vice versa.

25. The absence of competition in the towns where the defendants operate theatres is due mainly to the quality of the theatres, the efficiency of their operation and the fact that ample seating facilities exist for the theatre-going public.

Dated: New York, N. Y., May 24, 1944.

Yours etc., Edmund M. McCarthy, Attorney for Schine Chain Theatres, Inc., et al., 70 Pine Street, New York City, New York.

To George L. Grobe, Esq., United States Attorney for the Western District of New York, Solicitor for Plaintiff.

[fol. 251] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

PLAINTIFF'S ANSWER TO REQUEST FOR ADMISSION OF FACTS

In response to defendants' Request for Admission of Facts, plaintiff states as follows, for the purpose of this trial only:

1. In response to paragraph 1, plaintiff admits that for the past fifteen to twenty years the normal method of licensing the exhibition of copyrighted motion picture photoplays in the United States of America, including the states of New York, Ohio, Kentucky, Maryland, Delaware and Virginia, has been and now is on a so-called run basis, to wit: for a first run, to a theatre in a local competitive area with such exclusive exhibition rights and clearance privilege, if any, as may be appropriate to the successful exploitation of said copyrights in said area; for such subsequent runs in said area, and with such exclusive exhibition rights and clearance privileges, if any, as may be appropriate to the successful exploitation of said copyrights in said area. Except as admitted herein the truth of the facts stated in said paragraph is denied.

2. In response to paragraph 2, plaintiff admits that it has been the usual and customary practice for the distribu-[fol. 252] tor to agree with its licensees that it will not exhibit or grant a license to exhibit its photoplays for exhibition in conflict with the run licensed the exhibitor or prior to the clearance period agreed upon with the exhibitor. Except as admitted herein, the truth of the facts stated in said paragraph is denied.

3. Plaintiff admits the truth of the facts stated in paragraph 3.

4. In response to paragraph 4, plaintiff admits that in each competitive area, under normal business conditions of free competition, each distributor desires to license its films for successive runs in such area under such clearance terms as will yield the maximum total license revenue from the area. In determining which theatre shall have which runs, its past business relations with the theatre, the skill and character of its management, its size, location,

equipment and drawing power are all factors which, among others, may influence such a decision. Except as admitted herein, the truth of the fact stated in said paragraph 4 is denied.

5. Plaintiff admits the truth of the facts stated in paragraph 5.

6. Plaintiff admits the truth of the facts stated in paragraph 6 as to feature pictures only and denies it as to all other motion pictures.

7. Plaintiff admits the truth of the facts stated in paragraph 7.

8. Plaintiff admits the truth of the facts stated in paragraph 8.

9. In response to paragraph 9, plaintiff admits that whether a theatre is a first-class theatre is determined by, [fol. 253] among other things, its physical condition, appointments, seating capacity, manner of operation and the extent and character of advertising and admission prices. Except as herein admitted, the truth of the facts stated in said paragraph is denied.

10. As to paragraph 10, plaintiff states that it does not know the truth or falsity of the statement made therein and, therefore, denies the truth thereof.

11. Plaintiff admits the truth of the facts stated in paragraph 11.

12. Plaintiff does not know the truth or falsity of the statement made in paragraph 12 and, therefore, denies the truth thereof.

13. Plaintiff denies the truth of the facts stated in paragraph 13.

14. Plaintiff does not know the truth or falsity of the statements made in paragraph 14 and, therefore, denies the truth thereof.

15. Plaintiff denies the truth of the facts stated in paragraph 15.

16. Plaintiff denies the truth of facts stated in paragraph 16.

17. Plaintiff denies the truth of the facts stated in paragraph 17.

18. Plaintiff denies the truth of the facts stated in paragraph 18.

19. Plaintiff denies the truth of the statements made in the first two sentences of paragraph 19. The truth of the facts stated in the third sentence is admitted. As to [fol. 254] the fourth sentence, plaintiff admits that in the case of clearance granted to a particular theatre, it is customary for the distributor to agree to license other theatres in accordance with that clearance. Except as admitted in the foregoing sentence, the truth of the facts stated in said fourth sentence is denied.

20. Plaintiff believes that paragraph 20 is answered by its answer to paragraph 4. To the extent that it is not so answered, plaintiff denies the truth of the facts stated in said paragraph 20.

21. Plaintiff believes that paragraph 21 is answered by its answer to paragraph 4. To the extent that it is not so answered, plaintiff denies the truth of the facts stated in said paragraph 21.

22. The truth of the facts stated in the first sentence of paragraph 22 is admitted. The truth of the facts stated in the last two sentences of said paragraph is denied.

23. Plaintiff admits the truth of the facts stated in the first two sentences of paragraph 23. Plaintiff denies the truth of the facts stated in the last sentence of paragraph 23.

24. Plaintiff admits the truth of the facts stated in the first and third sentences of paragraph 24. As to the second sentence plaintiff admits that the tastes of the public vary and that the judgment of critics sometimes differs from that of the public as reflected by box-office receipts. Except as herein admitted, the facts stated in said sentence are denied.

25. Plaintiff denies the truth of the facts stated in paragraph 25.

[fol. 255] 26. Insofar as any of the statements contained in the aforesaid request for an admission of facts are

statements of opinion, plaintiff denies the correctness thereof.

Dated: Buffalo, New York, June 5, 1944.
Yours, etc., Robert L. Wright, Attorney for Plaintiff.

To Willard S. McKay, Esq., Seth Richardson, Esq., Saul Rogers, Esq., Edmund D. McCarthy, Esq., Attorneys for Defendants, % Statler Hotel, Buffalo, New York.

[fol. 256] In the District Court of the United States

[Title omitted]

Defendants' Answers to Plaintiff's Interrogatories

Now come the defendants, Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine-Lexington Corporation and Chesapeake Theatres Corporation, and make answer to the interrogatories heretofore propounded to said defendants by the plaintiff herein, as modified by stipulation bearing date May 19th, 1941. Although separate interrogatories were served with respect to each corporate defendant, the said interrogatories being identical in form and substance, the said defendants have undertaken to answer the said interrogatories jointly in accordance with the provisions of said stipulation bearing date May 19th, 1941.

The answers herein contained are confidential. The originals thereof are herewith filed with the Clerk of this Court, sealed, and shall not be matters of public record or other-
[fol. 257] wise open to inspection unless and until it shall be so ordered by the Court.

Willard S. McKay, 630 Fifth Avenue, New York City; Penney & Penney, 1550 Rand Building, Buffalo, N. Y., Solicitors for defendants Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation.

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ANSWER TO INTERROGATORY No. 2

Addresses of principal executive offices and all branch offices of defendant, (excluding offices of each theatre operated by defendant) and the nature and extent of the business which is carried on at each office, name and period of employment of each Manager since August 1, 1931 duties and authority of each Manager and geographical territory covered by each office.

Address	Nature and extent of business	Name and period of employment	Duties and Authority	Geographical Territory
Gloversville, N. Y.	Executive offices	(J. Myer Schine (Louis W. Schine (John A. May Marsh Gollner, District Manager, 10/1/38 to date	Principal executive officers—General supervision of operations	New York, Ohio, Kentucky, Virginia, Maryland and Delaware.

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ANSWER TO INTERROGATORY NO. 3

Names and addresses of all persons who have been Directors or Officers of the defendant, or persons performing similar functions, at any time since August 31, 1931, indicating in each instance the office held and the term thereof

As to Schine Chain Theatres, Inc.:

Name	Address	Office Held	Dates
J. Myer Schine	Gloversville, N. Y.	President and Director	8/31/31 to date
Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas. & Director	8/31/31 to date
John A. May	Gloversville, N. Y.	Comptroller & Director	8/31/31 to date
		Vice President	1/17/38 - intermittent periods to date
Willard S. McKay	New York City, N. Y.	Director	8/31/31 - 1/19/32
		Vice President	1/17/38 - intermittent periods to date
George V. Lynch	Gloversville, N. Y.	Director	8/22/32 - 2/10/36

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As to Schine Circuit, Inc.:

Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas. & Director	5/12/37 to date
John A. May	Gloversville, N. Y.	President & Director	5/12/37 to date
Willard S. McKay	New York City, N. Y.	Vice President	8/27/38 - intermittent periods to date

As to Schine Theatrical Co., Inc.:

J. Myer Schine	Gloversville, N. Y.	President & Director	8/26/26 - 9/7/37
Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas. & Director	8/28/26 to date
John A. May	Gloversville, N. Y.	Director	8/28/26 to date
		Vice President	8/28/26 - 9/7/37
		Comptroller	9/ 6/27 - 9/8/37
		President	9/ 7/37 to date

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As to Schine Enterprises Corporation:

J. Myer Schine	Gloversville, N. Y.	President & Director	2/26/35 - 2/26/37
Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas. & Director	2/26/35 to date
John A. May	Gloversville, N. Y.	Director	2/26/35 to date
		Vice President	2/26/35 - 2/26/37
		President	2/26/37 to date

As to Schine Lexington Corporation:

J. Myer Schine	Gloversville, N. Y.	Pres. & Dir.	10 1/36 - 11/ 4/37
Louis W. Schine	Gloversville, N. Y.	Sec'y., Treas.	10/ 1/36 to date
		Director	10/ 1/36 - 11/10/36
			3/31/37 to date
John A. May	Gloversville, N. Y.	Director	10/ 1/36 to date
		Vice President	10/ 1/36 - 11/ 4/37
		Comptroller	11/10/36 - 11/ 4/37
		President	11/ 4/37 to date
Willard S. McKay	New York City, N. Y.	Vice President	10/ 1/36 - 11/ 4/37
			11/21/38 - 11/ 7/40
Louis Lazar	Bellefontaine, Ohio	Director	11/10/36 - 12/22/36
		Vice President	10/ 1/36 - 11/10/36
			1/ 9/39 to date
		Ass't. Sec'y.	11/10/36 - 12/22/36
		Ass't. Treas.	11/21/38 to date
Eugene Custer		Director	12/22/36 - 3/31/37
		Ass't. Sec'y.	12/22/36 - 3/31/37
Lew Hensler	Lexington, Ky.	Ass't. Sec'y.	12/31/30 - 2/ 1/41

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Interrogatory No. 3 (Continued)
As to Chesapeake Theatre Corporation:

Name	Address	Office Held	Dates
J. Myer Schine	Gloversville, N. Y.	Director	8/ 6/38 to date
		President	8/ 6/38 – 7/16/40
		Treasurer	1/12/39 to date
Louis W. Schine	Gloversville, N. Y.	Director	4/19/39 to date
		Secretary	4/19/39 to date
John A. May	Gloversville, N. Y.	Director	4/26/38 – intermittent periods to date
		President	4/26/38 – intermittent periods to date
Willard S. McKay	New York City, N. Y.	Vice President	10/28/38 – 7/16/40
		Director	4/26/38 – 12/30/38
Marsh Gollner	Salisbury, Md.	Vice President	4/26/38 to date
		Ass't. Secy.	7/16/40 – 4/16/41

[fol. 265] ANSWER TO INTERROGATORY No. 7

Names and addresses of the ten largest stockholders of record of each class of stock and the number of shares held by each, stating any changes which have occurred from August 31, 1931 to date.

As to Schine Chain Theatres, Inc.:

Name of Stockholder	Address	No. of Shares	Changes from 8/31/31 to date
Class A Common:			
Schinebro, Inc.	Gloversville, N. Y.	30356	Acquired 1331 additional shares 2/19/32—had 29025
John A. May	Gloversville, N. Y.	1331	Disposed of 2/19/32
Universal Chain Theatrical Ent. Inc.	New York, N. Y.	9644	Disposed of 11/9/31
Caroga Corp.	Gloversville, N. Y.	9644	11/9/31 to date
St. Lawrence Holding Co. Ltd *	Charlottetown, Prince Edward Island, Canada	50000	Jan. 1938 to 8/31/41
Class B Common:			
Schinebro, Inc.	Gloversville, N. Y.	7500	None
Universal Chain Theatrical Ent. Inc.	New York, N. Y.	2500	Disposed of 11/9/31
Caroga Corp.	Gloversville, N. Y.	2500	11/9/31 to date

Preference Stock: Ten largest stockholders on the following dates:

As of 8/31/31

Name	Address	No. of Shares
Fred E. Billingham	Gloversville, N. Y.	2405
Frank L. Kemmerer	Gloversville, N. Y.	458
John A. May	Gloversville, N. Y.	1200

* All of the stock of St. Lawrence Holding Co. Ltd. is owned by the defendant, Schine Chain Theatres, Inc. Papers have been filed and approved providing for the dissolution of St. Lawrence Holding Co. Ltd. as of August 31, 1941. Therefore, the said stock of Schine Chain Theatres Inc. is now considered as treasury stock of Schine Chain Theatres, Inc.

[fol. 266] Interrogatory No. 7 (Continued)—page 2

Name	Address	No. of Shares
Schinebro, Inc.	Gloversville, N. Y.	6433
J. Myer Schine	Gloversville, N. Y.	516
Louis W. Schine	Gloversville, N. Y.	500
George W. Redfield	Oswego, N. Y.	345
First National Bank & Trust Co. of Rochester for acct. of Mrs. Mollie Shafer	Rochester, N. Y.	1000
Rufus Shew	Gloversville, N. Y.	581
Frederick Thompson	Cortland, N. Y.	350
As of 8/31/34		
Fred E. Billingham	Gloversville, N. Y.	3209
Frank L. Kemmerer	Gloversville, N. Y.	441
John A. May	Gloversville, N. Y.	1206
Schinebro, Inc.	Gloversville, N. Y.	7174
J. Myer Schine	Gloversville, N. Y.	1290
Louis W. Schine	Gloversville, N. Y.	1027
Rufus Shew	Gloversville, N. Y.	581
Wm. H. Fuller	Gloversville, N. Y.	200

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ANSWER TO INTERROGATORY No. 15

List Of All Corporations In Which Defendant Has, At Any Time Since August 31, 1931, Owned Any Financial Interest

Note:

1. All of the corporations herein listed may be reached or addressed in care of Schine Chain Theatres, Inc., Gloversville, N. Y.
2. The phrase "original issue" denotes the acquisitions by the defendant of the stock of the respective corporation from its inception by original issue of such stock directly to defendant.

Name of Corporation	Nature of Business	Extent of Interest	Date Acquired	From Whom	Date Sold or Disposed of	To Whom
Incorporated—State of New York						
Amsterdam Consolidated Corp.	Operating and realty	Stockholder—100%	50%—1938 Balance 1935	Stock purchased from Casey, Thompson, Walter, Summer Operating Co. and Schuyler Securities Co.		
Auburn G. L. Realty Corp.	Realty	" "	Jan. 17, 1936	Original Issue		
Bath Theatres, Inc.	Operating	" "	Oct. 1924	Stock purchased—Dygert-Associated Theatres, Inc.		
Berin Schine Theatres, Inc.	Operating	" "	Sept. 1935	Stock purchased from one Berinstein		
Bridge & Second Streets Realty Co.	Realty	" "	May 10, 1937	Original issue		
Buffalo-Granada Theater Corp.	Operating and realty	" "	50%—1926 Balance—Nov. 9, 1931	50% original issue balance stock purchased from Universal Enterprises, Inc..		
Buffalo-Riverside Corporation	Operating and realty	" "	Dec. 2, 1926	Original issue		
Canan-Daigua Theatres, Inc.	Realty	" "	Oct. 1924	Stock purchased from Associated Theatres, Inc.		
Carthage-Strand Corp.	Realty	" "	May 14, 1924	Original issue		
Central New York Amusement Co. Inc.	Realty	" "	1925	Stock purchased from one Earl		
Chenango Theatre Corp.	Realty	" "	1921	Stock purchased from one Tennis		
Corning Liberty Corp.	Realty	" "	July 20, 1928	Original issue		
Corning-Opera House Company	Operating	" "	1924	Stock purchased Dygert - Associated Theatres, Inc.		

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Cortstate Corp.	Realty	Stockholder—100%	Feb. 25, 1927	Original issue		
Dominion Operating Co. Ltd.	Operating	" "	April 26, 1933	" "		
En-Kay Amusement Co.	Realty	" "	June 30, 1932	Stock purchase N. Kornblite, Binghamton, NY		
Fairport Realty Corp.	"	" "	Jan. 19, 1928	Original Issue		
G. C. Theatre Corp.	Operating	" "	August 22, 1927	" "		
Gateway Theatre Corp.	Realty	" "	1925	Stock purchase from one Earl et al		
Geneva Theatres, Inc.	Operating	" "	Oct. 1924	Stock purchase Dygert-Associated Theatres, Inc.		
Glove City Amusement Co. Inc.	"	" "	May 7, 1920	Original Issue		
Glove Theatre Corp.	Realty	" "	May 14, 1924	" "		
Gloversville-Family Corp.	"	" "	May 14, 1924	" "		
Gloversville-Hippodrome Corp.	"	" "	May 16, 1924	" "		
Herzberger Amusement Company, Inc.	Operating	" "	Oct. 1936	Stock purchase from Osborne & Dipson		
Mamyer Operating Co. Inc.	"	" "	50% April 1933 Balance Aug. 1937	50% original issue—balance purchase Aug. 1937		
Massena-Strand Corp.	"	" "	Dec. 3, 1926	Original Issue		
Munmad Theatres Corp.	Operating and Realty	" "	April 18, 1935	Original Issue		
Newark Theatres Inc.	Realty	" "	October 1924	Stock Purchase Dygert-Associated Theatres, Inc.		
Norstate Theatre Corp.	Operating	" "	June 8, 1933	Original Issue		
Oneonta Strand Corp.	Realty	" "	Dec. 12, 1922	Original Issue		
Oswego Orpheum Corp.	Operating	" "	June 27, 1922	" "		
Oswego Strand Corp.	Realty	" "	June 27, 1922	" "		
Otlair Corp.	Operating	" "	Jan. 26, 1937	" "		
Palace Lockport Corp.	Realty	" "	May 6, 1924	" "		
Penn Elm Corp.	"	" "	Oct. 20, 1936	" "		

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Perry Theatre Corp.	Realty	Stockholder—100%	Aug. 7, 1935	Original Issue			
Pontiac Sardnac Corp.	"	" "	Dec. 3, 1926	" "			
Racit Corporation	"	" "	Dec. 19, 1935	" "			
Reliance Theatres, Inc.	Operating	" "	Oct. 1936	Stock purchase from Osborne & Dipson			
Rochester Grand Corp.	Realty	" "	July 15, 1926	Original Issue			
Rochester Liberty Corp.	Operating	" "	Dec. 3, 1926	" "			
Rochester Riviera Corp.	None	" "	" " "	" "			
Rochester State Corp.	Operating	" "	" " "	" "			
Rostate Realty Corp.	Realty	" "	Jan. 19, 1928	" "			
S. G. Theatre Corp.	Operating and Realty	" "	Feb 11, 1927	" "			
S. R. Theatre Corp.	Realty	" "	Sept. 6, 1927	" "			
Schine-Amsterdam Corp.	Operating	" "	Dec. 22, 1937	" "			
Schine Circuit Inc.	Service	" "	May 10, 1937	" "			
Schine Clearance Corp.	Operating	" "	May 14, 1924	" "			
Schine Enterprises Corp.*	Service	" "	Feb. 20, 1935	" "			
Schine Franklin Corp.*	Realty	" "	Jan. 14, 1937	" "			
Schine Hamilton Corp.	Operating	" "	Nov. 28, 1936				
Schine Ilion Corp.	"	" "	Aug. 31, 1937				
Schine Lexington Corp.*	"	" "	Sept. 15, 1936	" "			
Schine Malone Corp.	"	" "	Dec. 3, 1926	" "			
Schine Northern Corp.	Realty	" "	April 20, 1937	" "			
Schine Ogdensburg Corporation	Operation	" "	Dec. 3, 1926	" "			
Schine Oneonta Corp.	Realty	" "	Dec. 12, 1922	" "			
Schine Oswego Corp.	Operating and Realty	" "	June 27, 1922	" "			

* Held stock of Benton-Schine Corpn. until August 28, 1939

* Also holds stock of Phoenix Amusement Co and other Kentucky corpns. qualified Kentucky.

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Schine Realty Corp.	Realty	Stockholder—100%	May 6, 1924	Original Issue			
Schine Riviera Corp.	"	" "	Sept. 6, 1938	" "			
Schine Rochester Corp.	Operating	" "	Feb. 7, 1939	" "			
Schine Theatrical Co. Inc.	"	" "	Aug. 26, 1926	" "			
Seneca Theatres Inc.	Realty	" "	July 15, 1926	" "			
Shaferland Corp.	"	" "	July 10, 1922	" "			
Storm King Theatre Corp.	Operating and Realty	" "	April 8, 1940	" "			
Tri-City Theatre Circuit	Realty	" "	50% original issue—balance Nov. 9, 1931	Universal Chain Enterprises, Inc.			
Upstate Amusement Co.	"	" "	50% March 1927—Balance Aug. 1937	50% original issue—balance purchase from Shea interests			
Valley Theatre Corp.	Operating	" "	July 15, 1925	Original Issue			
Wilful Realty Corp.	Operating and Realty	" "	July 12, 1937	Original Issue			
Yateswood Corp.	Operating	" "	Oct. 22, 1936	Original Issue			
Benton-Schine Corp.	Operating and Realty	Stockholder— 50%	Apr. 8, 1937	" "			
BKE Operating Company, Ltd.	Operating	"	40% Sept. 13, 1935 10% Aug. 16, 1939	40% original issue 10% stock purchase			
Bolgerville Strand Corp.	Realty	" 100%	May, 1924	Original Issue	1933	Corporation has done no business since	
Webster Operating Corp.	Operating	" 50%	August, 1927	Original Issue	Dec. 30, 1933	Fogel & Tishkoff, Rochester, N. Y.	
Herkimer-Little Falls Corp.	Operating	" 100%	50% Aug. 1925 Balance Nov. 1931	50% Original Issue Bal. stock purchase from Univ. Pic. Corp.	August, 1936	Corporation dissolved	
Fairport Theatres Inc.	Operating	" 100%	December, 1926	Original Issue	August, 1936	Corporation dissolved	
State Enterprises Inc.	Operating	" 100%	February, 1926	Original Issue	1933	Corporation in bankruptcy	
Associated Theatres Inc.	Operating and Realty	" 100%	October, 1924	Stock purchase from H. B. Dygert, et al.	Dec. 1932	Corporation liquidated	
Lockport Enterprises Inc.	Operating	" 50%	September, 1927	Original Issue	Dec. 1932	Corporation has done no business	

ANSWER TO INTERROGATORY No. 15—Continued

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Name of Corporation	Nature of Business	Extent of Interest	Date Acquired	From Whom	Date Sold or Disposed of	To Whom
Lockport Temple Corp.	Realty	Stockholder 100%	May, 1924	Original Issue	June, 1935	Corporation dissolved
Rego Schine Corp.	Operating	" 50%	June, 1928	Original Issue	May, 1934	Corporation dissolved
Schine Auburn Corp.	Operating	" 100%	October, 1923	Original Issue	June, 1935	Corporation dissolved
Temple Photoplay Inc.	Realty	" 100%	October, 1924	Stock pur. from H. B. Dygert, et al.	June, 1935	Corporation dissolved
Incorporated—State of Ohio						
Belpik Theatre Corp.	Operating and Realty	Stockholder—100%	March 30, 1933	Original Issue		
Civic Theatre Inc.	Operating	" "	May 31, 1936	Stock purchase from C. Kahn, Fostoria, O.		
The Crawford Theatre Company	" "	" "	April, 8 1937	Stock purchase from N. Charnes, Bucyrus, O.		
The Limo Corp.	Realty	" "	Feb. 25, 1930	Original Issue		
Mt. Lyric Real Estate Corp.	"	" "	Jan. 4, 1936	" "		
Schine Ashland Corporation	Operating	" "	75% Nov. 6, 1935 25% Oct. 1937	75% original issue 25% purchase from Bickert, Ashland, O.		
Schine Athens Realty Corp.	Realty	" "	Nov. 9, 1935	Original Issue		
Schine Bucyrus Corp.	"	" "	Aug. 14, 1935	" "		
Schine Delaware Corp.	Operating	" "	50% Jan. 7, 1936 Balance Jan. 11, 1940	50% original issue 50% purchase from H. Bieberson, Delaware, O.		
Schine Kent Improvement Corp.	Realty	" "	Nov. 30, 1937	Original Issue		
Schine Kent Theatre Corp.	Operating	" "	Nov. 30, 1937	" "		
Schine Ravena Improvement Corp.	Realty	" "	Nov. 30, 1937	" "		
Schine Ravena Theatre Corp.	Operating	" "	Nov. 30, 1937	" "		
The Fostoria Theatre Corp.	"	" 50	June 21, 1937	" "		

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Kinney-Mott Corporation	Operating	Stockholder— 50%	July 22, 1931	Original Issue		
Medina-Princess Corp.	"	Stockholder— 25%	April 7, 1939	" "		
Norwalk Theatre Corp.	Operating and Realty	Stockholder—66⅔%	July, 1935	Stock purchase from W. K. Selman, Steel et al Norwalk, O.		
Schine Medina Corp.	" " "	Stockholder— 50%	March 20, 1937	Original Issue		
Schine Shelby Corp.	Operating	" "	Sept. 21, 1937	" "		
Schine Tiffin Corp.	"	" "	Feb., 1938	" "		
Seneca Theatres Inc.	" "	" "	April, 1935	(Britton & Silverman) Stock purchase from Britton & Silverman		
Wooster Theatres, Inc.	Realty	" "	1931	Original Issue		
Incorporated—State of Kentucky						
Corbin Theatre Company	Operating	Stockholder—100%	October 1938	Local stockholders, Corbin, Ky.		
Liberty Amusement Company	"	" "	August, 1939	Stock purchase Elliott Ward et al, Lexington, Ky.		
Phoenix Amusement Company	Operating and Realty	" "	November 1936	Stock purchase Elliott Ward et al, Lexington, Ky.		
Phoenix Maysville Theatre Company	Operating	" "	60% Jan. 11, 1939 40% December 1940	60% original issue 40% stock purchase from one Kaplan		
Phoenix Middlesboro Theatre Company	"	" "	Dec. 2, 1938	Original Issue		
Phoenix Harlan Theatre Company	"	Stockholder— 50%	January, 1941	" "		

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Incorporated—State of Maryland						
The Cambridge Theatres Company	Operating and Realty	Stockholder— 90%+	April 1938	Stock purchase various local stockholders, Cambridge, Md.		
Chesapeake Theatres Corp.	Operating and Realty	Stockholder—100%	April 19, 1938	Original issue		
Hurlock Theatre Corp.	Operating	" "	October 1938	Stock purchase from M. Gollner, Salisbury, Md.		
Wico-Mico Theatre Corp.	"	" "	October 1938	Stock purchase from M. Gollner, Salisbury, Md.		
Incorporated—State of Delaware						
Milford Theatre Corp.	Realty	Stockholder—100%	January 4, 1939	Original Issue		
Sidney Theatre Corp.	Operating and Realty	" "	April 30, 1927	" "		
Incorporated—State of Virginia						
Schine-Virginia Corp.	Operating and Realty	Stockholder—100%	June 7, 1940	Original issue		

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ANSWER TO INTERROGATORY No. 16

Names And Addresses Of All Corporations Which, At Any Time Since August 31, 1931 Have Owned A Financial Interest In Defendant Directly Or Indirectly.

Name of Corporation	Nature of Business	Nature and Extent of Interest	Date of Acquisition	From Whom Acquired	Date of Disposition	To Whom
I. As to Defendant, Schine Chain Theatres, Inc. (Class A and Class B Common Stock)						
Universal Chain Theatrical Enterprises, Inc.	Ownership and operating of m. p. theatres	9644—Class A	March 17, 1925	J. M. & L. W. Schine	Nov. 9, 1931	Caroga Corp.
Caroga Corp.	Personal Holding Co.	2500—Class B				
Schinebro, Inc.		9644—Class A	Nov. 9, 1931	Universal Chain Theatrical Enterprises, Inc.	—	—
		2500—Class B				
		30,356—Class A	27600–8/25/26	Original Issue	—	—
			1325–4/28/30	Sol. Shafer		
			100– 5/8/30	Halton D. Bly		
			1331–2/19/32	John A. May		
		7,500—Class B	6900—8/16/26	Original Issue	—	—
St. Lawrence Holding Co. Ltd	Holding Company	50,000—Class A	600—9/30/26	John A. May		
			January, 1938	Original Issue	Aug. 31, 1941—	(All of the stock of St. (Lawrence Holding Co. Ltd. is (owned by the defendant (Schine Chain Theatres, Inc. (Papers have been filed and (approved providing for the (dissolution of St. Lawrence (Holding Co. Ltd. as of (August 31, 1941. Therefore, (the said stock of Schine (Chain Theatres, Inc. is now (considered as treasury stock (of Schine Chain Theatres, Inc.
II. As to Schine Circuit, Inc.						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	May 10, 1937	Original Issue		
III. As to Schine Theatrical Co., Inc.						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	Aug. 26, 1926	Original Issue		
IV. As to Schine Enterprises Corporation						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	Feb. 10, 1935	Original Issue		
V. As to Schine Lexington Corporation						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	Sept. 15, 1936	Original Issue		
VI. As to Chesapeake Theatres Corporation						
Schine Chain Theatres, Inc.	Holding Company	Stockholder—100%	Apr. 19, 1938	Original Issue		

[fol. 277] Interrogatory No. 16 (cont'd)

List of holders of "Preferred Stock" of Schine Chain Theatres, Inc. as of the following dates:

August 31, 1931.
Associated Theatres, Inc., Gloversville, N. Y.—15 sh.
Bowery Savings Bank, New York City for account of Lillian M. Burton—28 sh.
National City Bank of New Rochelle for account of Stephen C. Hueber—100 sh.
First National Bank & Trust Co. of Rochester, N. Y. for account of Mrs. Mollie Shafer—1000 sh.
Schinebro, Inc., Gloversville, N. Y.—6433 sh.

April 1, 1934
Associated Theatres, Inc., Gloversville, N. Y.—15 sh.
Cortland Trust Co., as Admr. of Est. of Theron Houpt—66 sh.
Schinebro, Inc., Gloversville, N. Y.—7174 sh.

* no stockholders' list available for August 31, 1934 as no dividend declared.

August 31, 1937
Emigrant Industrial Savings Bank, New York City, for account of Lillian M. Burton—28 sh.
Canada Permanent Trust Co., Brantfort, Ontario, Can. for account of Mabel Cook—50 sh.
Schinebro, Inc., Gloversville, N. Y.—7524 sh.

August 31, 1940
Canada Permanent Trust Co.—50 shares
Schinebro, Inc., Gloversville, N. Y.—3146 sh.

Name	Address	No. of Shares
Gordon P. Young	Gloversville, N. Y.	300
Harry J. Stolte	Pleasantville, N. Y.	300
As of 8/31/37		
Fred E. Billingham	Gloversville, N. Y.	3336
Schinebro, Inc.	Gloversville, N. Y.	7524
J. Myer Schine	Gloversville, N. Y.	1654
Louis W. Schine	Gloversville, N. Y.	1582
Helen M. Breese	Schenectady, N. Y.	245
Hildegarde F. Schine	Gloversville, N. Y.	333
Edith Shew	Gloversville, N. Y.	287
Harry J. Stolte	Pleasantville, N. Y.	300
Gordon P. Young	Gloversville, N. Y.	310
Samuel Kovar	Bronx, N. Y.	300
As of 8/31/40		
Fred E. Billingham	Gloversville, N. Y.	3444
Helen M. Breese	Schenectady, N. Y.	245
[fol. 268]		
Schinebro, Inc.	Gloversville, N. Y.	3146
J. Myer Schine	Gloversville, N. Y.	1384
Louis W. Schine	Gloversville, N. Y.	1352
Hildegarde F. Schine	Gloversville, N. Y.	383
Edith Shew	Gloversville, N. Y.	287
Harry J. Stolte	Pleasantville, N. Y.	300
Samuel Kovar	Los Angeles, Cal.	300
Gordon P. Young	Gloversville, N. Y.	310

As to other Schine corporate defendants, all stock held by Schine Chain Theatres, Inc.

[fol. 263] ANSWER TO INTERROGATORY NO. 4

As to each class of stock outstanding at any time during the period from August 31, 1931 to date, state the total amount authorized and outstanding as of August 31, 1931 and indicate all changes with respect thereto which have occurred from August 31, 1931 to date.

As to Schine Theatres, Inc.

	Authorized 8/31/31	Outstanding 8/31/31	Changes 8/31/31 to date	Outstanding 8/31/40
Preference Stock	100,000.	35,900.	None	21,850
Class A Common	100,000.	40,000.	None *	40,000
Class B Common	10,000.	10,000.	None *	10,000

* Certificate filed 12/31/37 changing classification of Class A and Class B common stock from "no par value" to $1.00 par value.

No changes in preference stock except for retirement of shares purchased in open market from time to time.

As to Schine Circuit, Inc.:
Incorporated—May 10, 1937
Authorized—10 shares common stock—no par value
Outstanding—10 shares—original issue
Changes since 8/31/31—None

As to Schine Theatrical Co., Inc.:
Incorporated—August 26, 1926
Authorized—100 shares common stock—no par value
Outstanding—100 shares—original issue
Changes since 8/31/31—None

As to Schine Enterprises Corp.:
Incorporated—February 20, 1935
Authorized—100 shares common stock—no par value
Outstanding—100 shares—original issue
Changes since 8/31/31—None

[fol. 264]

As to Schine Lexington Corp.:
Incorporated—September 15, 1936
Authorized—10 shares common stock—no par value
Outstanding—10 shares—original issue
Changes since 8/31/31—None

As to Chesapeake Theatres Corp.:
Incorporated—April 19, 1938
Authorized—100 shares common stock—no par value
Outstanding—100 shares—original issue
Changes since 8/31/31—None

ANSWER TO INTERROGATORY No. 17

17(A) Theatres owned by defendants and in which defendants have financial interest.

Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Regent	Owner	100%	9/10/28 50% remaining 50% Sept. 1935	Shea interests 50% up to Sept. 1935	....	....
Rialto	Lessee	100%	9/10/28 50% remaining 50% purchased Sept. 1935	Shea interests 50% up to 1935	....	....
Strand	Owner	100%	9/10/28 50% balance acquired Sept. 1935	Shea interests 50% up to 1935	....	....
Jefferson	Lessee	100%	3/21/27 50% balance August, 1937	Shea interests 50% up to August, 1937 (operated by Fox 1929–1933)	....	....
Palace (formerly Universal)	Lessee	100%	November, 1923	Shea interests from 1927 to 1937 (Fox operation 1929–1933)	....	....
Auburn	Owner	100%	Acquired land December 1923	none	....	....
Babcock	Lessee	100%	October 1924	none,—except Fox operation 1929–1933	none	none
Strand	Owner	100%	Mar. 21, 1927 50%—balance August, 1937	Shea interest 50% up to Aug. 1937 (Operated by Fox 1929–1933)	....	....

ANSWER TO INTERROGATORY No. 18

Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased
925	Closed part time*	Open occasionally or part time as business warrants	Owned
1380	Closed from 7/18/36 to 9/19/36	Closed for remodeling	Leased
1086	....	....	Owned
1100	Closed part time*	Part time operation	Leased
850	....	....	Leased
1800	Theatre open since Sept. 1938	New construction	Owned
693	....	....	Leased
	Closed since 1933* Demolished 1939	....	Owned

*indicates more complete information on attached schedule. The information herein contained should be read together with the information contained on the attached supplemental schedule.

If Leased Name of Lessor	Answer to Interrogatory No. 23 Name of Present Opposition Theatre
....	Orpheum—Opposition ceased June, 1941
Edward and Gertrude Clapp, Amsterdam, N. Y.	Orpheum—Opposition ceased June, 1941
....	Orpheum—Opposition ceased June, 1941
Osborne Estate, Auburn, N. Y.	Capitol
Ellen Herron, Auburn, N. Y.	Capitol
....	Capitol
Grace Babcock, Bath, N. Y.	None
....	Capitol

[fol. 279]

ANSWER TO INTERROGATORY No. 17—Continued

17(A) Theatres owned by defendants and in which defendants have financial interest.

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Ballston Spa	Capitol	Lessee	50%	April 1937	50% owned by William Benton, Saratoga NY	....	....
Buffalo	Granada	Owner	100%	Leased Dec. 1926—acquired fee June 1939	None	....	....
Buffalo	Riverside	Owner	100%	Lease August 1926—fee Dec. 1940	None	....	....
Buffalo	Jubilee	Lessee	100%	June 1928	None	March 1933	Lease unprofitable—made settlement with lessor, Jubilee Realty Co. and surrendered lease
Canandaigua	Playhouse	Owner	100%	Oct. 1924	None—except Fox operation 1929–1933	....	....
Canandaigua	Lake	Owner	100%	Leased Nov. 1939—fee Aug. 1940	None	....	....
Carthage	Strand	Owner	100%	Nov. 1922	None—except Fox operation 1929–1933	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
482			Leased	Wm. Benton, Saratoga, N. Y.	None
1702			Leased Dec. 1926 acquired fee June 1939	Ashley-Hager Inc. (lessor) fee from L. N. Whissel Lumber Co.	Not required
1281			Leased Aug. 1926 acquired fee Dec. 1940	Leased and purchased from Ellsworth Amusement Corp.	Not required
					Not required
1070			Owned		None
374		New construction completed April 1941	Leased Nov. 1939 fee acquired Aug. 1940	Leased and purchased from Joseph Soppe, Wellesville, N. Y.	None
786			Owned		State to March, 1935

[fol. 280]

ANSWER TO INTERROGATORY No. 17—Continued

17(A) Theatres owned by defendants and in which defendants have financial interest.

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Corning	Fox (formerly Liberty)	Owner	100%	Oct. 1924	None—except Fox operation 1929-1933	....	....
Corning	State	Owner	100%	Oct. 1924	None—except Fox operation 1929-1933	....	....
Corning	Palace (formerly Regent)	Lessee	100%	Apr. 1938	None	....	....
Cortland	State	Owner	100%	Site Sept. 1926—Theatre opened 1930	None	....	....
Cortland	Temple	Owner	100%	Sept. 1932	None	....	....
Cortland	Cortland	Owner	100%	Sept. 1932	None	....	....
Dolgeville	Strand	Owner	100%	March 1923	None	March 1933	Sold to William Faville
E. Rochester	Rialto	Lessee	100%	Oct. 1924	None	....	....
Fairport	Temple	Owner	100%	Leased Nov. 1936—fee Jan. 1928	None	....	....

* Indicates more complete information on attached schedule. The information herein contained should be read together with the information co

ANSWER TO INTERROGATORY No. 18

Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor
1933	.....	.....	Owned	.....
906	Closed since 1939*	Open occasionally or part time as business warrants	Owned	.....
398	.....	.....	Leased	Fred Gerber, Corning, N. Y.
1632	.....	.....	Owned	.....
588	.....	Part time summer of 1935 only	Owned	.....
.....	Closed since acquisition*	Never operated as theatre—converted to commercial use	Owned	.....
.....	.....	.....	.....	.....
900	.....	.....	Leased	H. Dygert, E. Rochester, N. Y.
850	.....	.....	Leased Nov. 1926—fee acquired Jan. 1928	Leased & purchased from Thomas Demeco. Rochester, N. Y.

ANSWER TO INTERROGATORY No. 23

Name of Present Opposition Theatre
Plaza-Palace to Apr. 1938
Plaza-Palace to Apr. 1938
Plaza
Opera House and Temple to June, 1932
None
None
.....
None
None

contained on the attached supplemental schedule.

[fol. 281]

ANSWER TO INTERROGATORY No. 17—Continued

17(A) Theatres owned by defendants and in which defendants have financial interest—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Geneva	Geneva	Owner	100%	Oct. 1924. Built in 1931 to replace opera house burned	None	....	....
Geneva	Regent	Lessee	100%	Oct. 1924	None	....	....
Geneva	Temple	Owner	100%	Oct. 1924	None	....	....
Glens Falls	Rialto	Owner	100%	Leased Mar. 1933 fee Jan. 1937	None	....	....

Answer to Interrogatory No. 18

Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor
1868	....	....	Owned	....
1055	....	Part-time operation during summers only 1931 to 1939 inclusive	Leased	O'Riely Estate, Geneva, N. Y.
....	Closed	Obsolete—replaced by new Geneva Theatre	Owned	
1318	....	....	Leased Mar. 1933—fee acquired Jan. 1937	Leased & purchased from Rialto Theatre Corp.

Answer to Interrogatory No. 23

Name of Present Opposition Theatre
Park (none until Jan. 1940 when Park Theatre opened and operated intermittently thereafter)
Park (none until Jan. 1940 when Park Theatre opened and operated intermittently thereafter)
Park (none until Jan. 1940 when Park Theatre opened and operated intermittently thereafter)
State-Empire to June, 1933. Paramount to June, 1940

[fol. 282]

ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Glens Falls	Empire	Lessee	100%	June 1933	None		
Glens Falls	Paramount	Lessee	100%	June 1, 1940	None		
Gloversville	Glove	Owner	100%	Apr. 1920	None—except Fox operation 1929–1933		
Gloversville	Hippodrome	Owner	100%	Leased 1917—Fee Feb. 1919	None—except Fox operation 1929–1933		
Hamilton	State	Owner	100%	Aug. 1934	None		
Herkimer	Liberty	Owner	100%	June 1925	None—except Fox operation 1929–1933		
Herkimer	Richmond	Lessee	100%	June 1925	None—except Fox operation 1929–1933		
Hudson Falls	Strand	Owner	100%	July 1935	None		
Iliom	Capitol	Owner	100%	Aug. 1937	None		
Ilion	Temple	Lessee	100%	Aug. 1937	None		
Little Falls	Rialto	Owner	100%	May 1925	None—except Fox operation 1929–1933		
Newark	Capitol	Owner	100%	Oct. 1924	None—except Fox operation 1929–1933		
Newark	Crescent	Lessee	100%	April 1926	None—except Fox operation 1929–1933		

*Indicates more complete information on attached schedule. The information herein contained should be read together with the information contained

Interrogatory No. 18					Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
750	....	....	Leased	Empire Real Estate Co., Glens Falls, N. Y.	State-Paramount to June, 1940*
1186	....	....	Leased	Paramount Pictures, Inc., N. Y. City	State
1298	9/20/40–10/6/40	Remodelling	Owned	....	None
1151	....	Closed during summers only 1935 and 1938	Leased 1917—fee acquired Feb. 1919	Leased & purchased from Odd Fellows Association	None
712	....	....	Owned	....	None
1046	....	....	Owned	....	None
....	Closed since 1933*	Obsolete—acquired as part of deal for Liberty	Leased	Mary Hines, Herkimer, N. Y.	....
891	....	....	Owned	....	None
1238	....	....	Owned	....	None
....	Closed when acquired	Obsolete—acquired as part of deal for Capitol	Leased	Odd Fellows Association, Ilion, N. Y.	....
1200	....	....	Owned	....	Hippodrome to June, 1936
1210	....	....	Owned	....	None
....	Closed since 1933*	Obsolete and unusable	Leased	R. A. Croucher, Newark, N. Y.	None

* contained on the attached supplement schedule.

[fol. 283]

ANSWER TO INTERROGATORY No. 17

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Little Falls	Hippodrome	Lessee	100%	June 1936	None		
Lockport	Rialto	Owner	100%	June 1924	None, except as below		
Lockport	Hi-Art	Lessee	100%	Oct. 1927	None, except Schine-Paramount operation to Dec. 1932		
Lockport	Palace	Lessee then Owner	100%	Oct. 1927 re-acquired Oct. 1936	Partnership with Paramount during period Oct. 1927 to Dec. 1932	Dec. 1932	Lease cancelled by landlord—re-acquired Oct. 1936 as fee
Malone	Malone (formerly Grand)	Owner	100%	Lease Sept. 1926—fee April 1937	None		
Malone	Plaza	Lessee	100%	Originally acquired Sept. 1926 and disposed of Sept. 1936. Reacquired Feb. 16, 1941	None	Leased terminated Sept. 1936—reacquired 2/16/41	Disposition in 1936, reverted to Lessor, Michael Boumansour, Malone, N. Y., by expiration of lease
Massena	Massena	Lessee	100%	Aug. 1926	None		
Massena	Rialto	Lessee	100%	1926	None	Aug. 31, 1931	Lease expired. Not renewed.

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
555	Closed part time*	Open occasionally or part time as business warrants	Leased	Odd Fellows Association, Little Falls, N. Y.	None
1484			Owned		Palace from Dec. 1932 to Oct. 1936
1062	Closed part time*	Open occasionally or part time as business warrants	Leased	J. J. Lannigan, Buffalo, N. Y.	
1698			Originally leased, subsequently re-acquired by fee ownership.	Original lessor Chas. Dickerson	None
1181			Owned		Plaza between 1936 and 1941
610		Operated by owner Boumansour between 1936 and 1941	Leased Sept. 1926 to Sept. 1936	Michael Boumansour Malone, N. Y.	None
1111			Leased	V. Warren, Massena, N. Y.	Rialto
			Leased Aug. 31, 1931		None while under Schine operation. At present this theatre constitutes opposition to Massena Theatre

[fol. 284]

ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Norwich	Colonia	Owner	100%	Nov. 1921	None—except Fox operation 1929–1933	....	....
Ogdensburg	Strand	Lessee	100%	Sept. 1926	None	....	....
Ogdensburg	Pontiac	Lessee	100%	Sept. 1926	None	....	....
Oneonta	Oneonta	Owner	100%	Nov. 1922	None—except Fox operation 1929–1933	....	....
Oneonta	Palace (formerly Maxey)	Owner	100%	Lease Mar. 1923 Fee Sept. 1927	None—except Fox operation 1929–1933	....	....
Oneonta	Strand	Owner	100%	Oct. 1919	None	....	....
Oswego	Strand	Owner	100%	Sept. 1922	None—except Fox operation 1929–1933	....	....
Oswego	Capitol	Owner	100%	Sept. 1922	None—except Fox operation 1929–1933	....	....
Oswego	Oswego	Owner	100%	Land acquired June 1937—theatre completed Jan. 22, 1941	None	....	....
Oswego	Richardson	Lessee	100%	Sept. 1922	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1045	July 1938	Closed for alterations	Owned	....	Smalley since 1930. Operated by Schine 1922–1930
1311	May 1940	Closed for alterations	Leased	Ogdensburg Strand Theatre Co.	None
460	Closed part time*	Open occasionally or part time as business warrants	Leased	Ogdensburg Strand Theatre Co.	None
1217	....	....	Owned	....	None
866	....	....	First leased then fee acquired	Leased & purchased from Thomas J. Maxey	None
....	Closed since 1933	Obsolete and unusable as theatre	Owned	....	None
950	Part time operation	....	Owned	....	None
696	....	....	Owned	....	None
1704	....	....	Owned	....	None
....	Closed*	Permanently	Leased	Bates Estate, Oswego, N. Y.	None

[fol. 285] ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Oswego	State	Owner	100%	Nov. 1934	None	....	....
Penn Yan	Elmwood	Owner	100%	Sept. 193[illegible]	None	....	....
Perry	Auditorium	Lessee	100%	Oct. 1936	None	....	....
Rochester	Dixie	Lessee	100%	Aug. 1932	None	....	....
Rochester	Grand	Owner	100%	Leased June 1924—fee Aug. 1925	None	....	....
Rochester	Liberty	Owner	100%	Leased Oct. 1926—fee Feb. 1939	None—except Paramount interests 1928–1933	....	....
Rochester	Riviera	Owner	100%	Leased Oct. 1926—fee April 1927	None—except Paramount interests 1928–1933	....	....
Rochester	State	Owner	100%	Leased Jan. 1926—fee Jan. 1928	None—except Paramount interests 1928–1933	....	....
Rochester	Cameo	Owner	100%	May 1936	None	....	....
Rochester	Lake	Lessee	100%	Jan. 1936	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re. Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
	Closed when acquired	Permanently. Converted to commercial use. October 1939	Owned		None
716	Nov. 1936	Closed for renovation	Owned		None
652			Leased	Town of Perry N. Y.	None
892			Leased	Dixie Theatre Corp., Rochester, N. Y.	Not required
834			Leased June 1924—fee Aug. 1925	First leased then acquired fee from Owner's Committee—owner incompetent	Not required
1256			Leased Oct. 1926—fee Feb. 1939	Lease originally from Levy then purchased from Fennyvessy	Not required
1508			Leased Oct. 1926—fee Apr. 1927	Owner, Joseph Jaroslow, Rochester, N. Y.	Not required
1062			Leased Jan. 1926—fee Jan. 1928	Thos. Demeco, Bldr. & Owner, Rochester, N. Y.	Not required
1258			Owned		Not required
840			Leased	Name of owner not presently available	Not required

[fol. 286] ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Rochester	Madison	Owner	100%	Feb. 1939	None	....	....
Rochester	Monroe	Owner	100%	Feb. 1939	None	....	....
Rochester	West End	Owner	100%	Feb. 1939	None	....	....
Rochester	Webster	Owner	100%	Sept. 1940	None	Previously operated with Fogel & Tishkoff up to Dec. 1933 when Schine withdrew	Disposed of interest in previous operation to Fogel & Tishkoff in Dec. 1933
Rochester	Plaza	Owner	100%	Sept. 1940	None	9/11/41	Sharp & Huurman d.b.a. Old Fashoned Cracker Co., Rochester, N. Y.
Salamanca	Andrews	Lessee	100%	Oct. 1924	None—except Fox operation 1929–1933	....	....
Saranac Lake	Pontiac	Owner	100%	Mar. 1927	None—except Fox operation 1929–1933	....	....
Seneca Falls	Strand	Lessee	100%	Sept. 1935	None	....	....
Syracuse	Eckel	Lessee	30%	Jan. 1927	B. F. Keith Corp. (Fox operation 1929–1933—RKO-Schine operation since Aug. 1935)	....	....
Seneca Falls	Seneca	Owner	100%	Apr. 1936	None	....	....

* Indicates more complete information on attached schedule.
The information herein contained should be read together with the information

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1381	....		Owned	....	Not required
1186	....	....	Owned	....	Not required
832	....	....	Owned	....	Not required
1099	....	....	Owned	....	Not required
....	Closed since acquisition*	Never operated as theatre	Owned	....	Not required
735	....	....	Leased	Max Andrews, Olean, N. Y.	None
1218	....	....	Owned	....	None
943	....	....	Leased	Withers, Sayer & Knox, Seneca Falls, N. Y.	None
1408	....	....	Leased	Central Cities Bldg., Utica, N. Y.	Not required
....	Closed permanently	Never operated as theatre since acquisition. Not in operating condition because equipment removed by former operator	Owned		None

contained on the attached supplemental schedule.

[fol. 287] ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Syracuse	Keith	Lessee	30%	Aug. 1935	B. F. Keith Corp. RKO-Schine operation	....	....
Syracuse	Paramount	Lessee	30%	Aug. 1935	B. F. Keith Corp. RKO-Schine operation	....	....
Syracuse	Strand	Lessee	30%	Aug. 1935	B. F. Keith Corp. RKO-Schine operation	8/31/41	Reverted to landlord on expiration of lease
Syracuse	Palace	Lessee	30%	Feb. 1939	B. F. Keith Corp. RKO-Schine operation, effective 9/1/40	....	....
Syracuse	James	Lessee	30%	June 1940	B. F. Keith Corp. RKO-Schine operation, effective 9/1/40	....	....
Syracuse	Empire	Lessee	30%	Jan. 1, 1941	B. F. Keith Corp. RKO-Schine operation	....	....
Tupper Lake	State	Lessee	100%	Jan. 1935	None	....	....
Utica	Avon	Lessee	100%	Jan. 1927	None—except Fox operation 1929-1933	May 1933	Warner's
Utica	Gaiety	Lessee	100%	Jan. 1927	None—except Fox operation 1929-1933	May 1933	Warner's
Utica	DeLuxe	Lessee	100%	Jan. 1927	None	1931	Lease terminated
Utica	Majestic	Lessee	100%	Jan. 1927	None—except sublease to Fox 1929	1929	Lease terminated

Interrogatory No. 18					Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
2548	....	....	Leased	B. F. Keith Corp., N. Y. City	Not required
1485	....	....	Leased	W. & J. Cahill, Syracuse, N. Y.	Not required
1656	....	....	Leased	Syracuse Strand Theatre Co., Syracuse	Not required
1417	....	....	Leased	A. Dibella, Syracuse, N. Y.	Not required
462	....	....	Leased	E. Dunn, Syracuse, N. Y.	Not required
1452	....	....	Leased	Mass. Mutual Life, Springfield, Mass.	Not required
509	....	....	Leased	Donovan & Prespare, Tupper Lake, N. Y.	Tupper Lake Junction

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ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold or Remarks
Watertown	Avon	Lessee	100%	Jan. 1927	None—except Fox operation 1929-1933		
Watertown	Olympic	Lessee	100%	Jan. 1927	None—except Fox operation 1929-1933		
Watertown	Palace	Lessee	100%	Sept. 1936	None		
Whitehall	Capitol	Lessee	50%	Apr. 1937	William Benton, Saratoga, N. Y.		
Mechanicville	State	Lessee	50%	Apr. 1937	William Benton, Saratoga, N. Y.		
Granville	Ritz	Owner	50%	Dec. 1938	William Benton, Saratoga, N. Y.		
Clifton Springs	Palace	Lessee	100%	Aug. 1941	None		
Ohio Ashland	Palace	Lessee	100%	Nov. 1935	B Bickert, Ashland 25% to Oct. 1937		
Ashland	Ohio	Lessee	100%	July 1938	None		
Ashland	Opera House	Lessee	100%	May 1936	None	Feb. 1941	City of Ashland (theatre condemned and dismantled by city)
Athens	Athena	Owner	100%	Sept. 1935	None		

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1376	....	....	Leased	Central Cities Bldg. Inc., Utica, N. Y.	Palace to Sept. 1936. Victoria, Liberty and State
1649	....	....	Leased	Central Cities Bldg. Inc., Utica, N. Y.	Victoria, Liberty and State
594	Closed part time during summers of 1937, 1938 and 1939	....	Leased	Northern N. Y. Utilities Corp., Watertown, N. Y.	Palace to Sept. 1936. Victoria, Liberty and State
877	....	....	Leased	Wm. Benton, Saratoga, N. Y.	None
1129	July 1937	Closed for renovation	Leased	Mechanicville State Theatre Inc., Saratoga, N. Y.	None
525	....	....	Owned	....	None
....	....	....	Leased	Josephine Williamson, Clifton Springs, N. Y.	None
634	....	....	Leased	F. Edwards & C. Clark	Opera House to May 1936 Ohio to July, 1938
307	Part time operation from acquisition 3/1/41	Reopened to replace Opera House 3/1/41.	Leased	S. D. Reed	None
....	Feb. 1941	Theatre condemned	Leased	....	Ohio to July, 1938
893	....	....	Owned	....	Court and Ohio to Jan. 1936

[fol. 289] ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Athens	Court	Lessee	100%	Jan. 1936	None	....	....
Athens	Ohio	Lessee	100%	Jan. 1936	None	....	....
Bellefontaine	Holland	Owner	100%	Land acquired June 1930—theatre completed 1931	None	....	....
Bellefontaine	Strand	Lessee	100%	July 1931	None	....	....
Bellefontaine	Opera House	Lessee	100%	July 1931—re-acquired Sept. 1933	None	Dec 31, 1931	Theatre condemned premises surrendered re-acquired Sept 1, 1933
Bucyrus	Bucyrus	Owner	100%	Acquired land Aug. 1935—theatre completed 1936	None	....	....
Bucyrus	Southern	Lessee	100%	April 1937	None	....	....
Bucyrus	State	Lessee	100%	Sept. 1935	None	Sept. 1937	Owners' lease cancelled and theatre converted to commercial use
Delaware	Strand	Lessee	100%	Jan. 1936	H. Bieberson owned 50% interest to Jan. 11, 1940	....	....
Delaware	Star	Lessee	100%	Mar. 1938	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
267	Closed part time*	Open occasionally or part time as business warrants	Leased	E. E. & G. Byrne, Ashland, O.	None
299	....	....	Leased	Ullom Heirs, Cleveland, O.	None
1319	....	....	Owned	....	Opera House—between 1/1/32 & 8/31/33
....	Closed part time*	Open occasionally or part time as business warrants	Leased	D. Gutilla, Bellefontaine, O.	Opera House between 1/1/32 & 8/31/33
....	Not leased to Schine between Dec. 31, 1931 and Sept. 1, 1933	Re-acquired Sept. 1, 1933. Closed when reacquired—not re-opened—building condemned	Leased	Opera Block Co.	None
1097	....	....	Owned	....	Southern to April, 1937
450	Part time operation*	Open occasionally or part time as business warrants	Leased	Carroll Trust Co., Bucyrus, O.	None
....	Closed since Sept. 1937.	....	Leased	....	....
777	....	....	Leased	Delaware Realty Co., Delaware, O.	Star to March, 1938
266	Part time operation*	Open occasionally or part time as business warrants	Leased	Powers Estate, Delaware, O.	None

[fol. 290] ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Fostoria	Civic	Lessee	50%	May 1936	A. Buck, et al., Fostoria, Ohio—50% interest	....	....
Fostoria	Roxy	Lessee	50%	May 1936	A. Buck, et al., Fostoria, Ohio—50% interest	....	....
Fostoria	State	Lessee	50%	July 1937	A. & U. Buck, et al., 50% interest	....	....
Fremont	Opera House	Lessee	100%	Apr. 1931	None	August 1931	Assigned lease to Paramount
Fremont	Strand	Lessee	100%	Apr. 1931	None	August 1931	Assigned lease to Paramount
Kent	Opera House	Lessee	100%	June 1936	None	....	....
Kent	Kent	Owner	100%	Dec. 1937	None	....	....
Medina	Princess	Lessee	25%	Sept. 1937	B. Yudelvitz—25% Fine et al.—50%	....	....
Medina	Temple	Lessee	25%	Apr. 1939	B. Yudelvitz—25% Fine et al.—50%	....	....
Mt. Vernon	Vine	Lessee	100%	Jan. 1934	None	....	....
Mt. Vernon	Vernon (Replaced Lyric Theatre on same site)	Lessee	100%	Apr. 1938	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 28
Seating Capacity	Closed Periods, If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor.	Name of Present Opposition Theatre
516	....	....	Leased	A. Emerine, Fostoria, Ohio	State to July, 1937
280	Closed permanently June 1938	Building condemned	Leased	C. & C. W. Mickey, Fostoria, O.	State to July, 1937
667	....	....	Leased	C. Mergenthaler, Fostoria, O.	None
....	....	....	....	....	....
....	....	....	....	....	....
598	Closed September 1937. Unable to obtain product	....	Leased	J. Palfi, Kent, O.	Kent to Dec. 1937
943	....	....	Owned	....	None
350	Closed June 1939	....	Leased	B. Udelvitz, Medina, O.	Temple Jan. 1938 to Apr. 1939
867	....	....	Leased	Masonic Temple Co., Medina, O.	None
585	Part time operation since Vernon Theatre opened	....	Leased	A. S. Payne, Cleveland, Ohio	Memorial between 1/1/35 & 12/31/40
1266	....	....	Leased	J. & P. Upham, Mt. Vernon, O.	Memorial between 1/1/35 & 12/31/40

[fol. 291]

ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Mt. Vernon	Memorial	Lessee	100%	Feb. 1, 1934 to Sept. 30, 1934 re-acquired Jan. 1, 1941	None	Lease expired Sept. 30, 1934—re-acquired Jan. 1, 1941.	Reverted to Lessor at expiration of lease
Norwalk	Forum	Lessee	66-2/3%	July 1935	W. K. Selman 33-1/3%		
Norwalk	Moose	Owner	66-2/3%	Dec. 1936	W. K. Selman 33-1/3%		
Norwalk	Norwalk	Owner	66-2/3%	Mar. 1940			
Piqua	Piqua	Lessee	100%	May 1931	None		
Piqua	Miami	Lessee	100%	May 1931	None		
Piqua	Bijou	Lessee	100%	May 1931	None		
Ravenna	Ravenna	Owner	100%	Dec. 1937	None		
Ravenna	Ohio	Owner	100%	Dec. 1937	None		
Shelby	Castamba	Lessee	50%	Sept. 1937	H. Shreffler—50%		

* Indicates more complete information on attached schedule. The information herein contained should be read together with the information contained on the attached supplemental schedule.

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1065	Not operated by Schine between Sept. 30, 1934 and Dec. 31, 1940*	Operated by opposition from 1/1/35 to 12/31/40	Subleased from 2/1/34 until expiration 9/30/1934. Leased from Jan. 1, 1941	Board of Trustees, Mt. Vernon	None
537	Closed*	....	Leased	H. Pohl, Norwalk	Moose to Dec. 1936
838	Part time operation	....	Owned	....	None
1111	Theatre completed and opened 8/13/41	....	Owned	....	None
958	....	....	Leased	P. & R. Amusement Co., Lancaster, Ohio	None
712	Part time operation since acquisition.	....	Leased	P. & R. Amusement Co., Lancaster, Ohio	None
375	Closed when acquired	Never operated	Leased	Boal Estate, Piqua, Ohio	None
871	....	....	Owned	....	None
499	Closed when acquired	Remodelled and reopened 6/20/41	Owned	....	None
749	....	....	Leased	Castamba Realty Co., Shelby, O.	Opera House (up to about Oct. 1937). State (since Oct. 1937)

[fol. 292]

ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Tiffin	Ritz	Lessee	50%	March 1936	D. Britten 25% Silverman 25%	....	....
Tiffin	Grand	Lessee	50%	March 1936	D. Britten 25% Silverman 25%	....	....
Tiffin	Tiffin	Lessee	50%	Feb. 1938	D. Bitten 25% Silverman 25%	....	....
Van Wert	Van Wert	Lessee	100%	Feb. 1935	None	....	....
Van Wert	Strand	Lessee	100%	Sept. 1935	None	....	....
Wooster	Wooster	Lessee	50%	July 1931	J. J. Kinney 25% E. P. Mott 25%	....	....
Wooster	Opera House	Lessee	50%	Sept. 1933	J. J. Kinney 25% E. P. Mott 25%	....	....
Wooster	Wallace	Lessee		Nov. 1932	....	Theatre dismantled Lease lapsed	....
Wooster	Wayne	Owner	50%	Land—July 1937 Theatre completed 1938	J. J. Kinney 25% E. P. Mott 25%	....	....
Bowling Green	Cla-Zel	Lessee	100%	Apr. 1, 1941	None	....	....
Bowling Green	Lyric	Lessee	100%	Apr. 1, 1941	None	....	....

Interrogatory No. 18					Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
1322	....	....	Leased	Tiffin Rits Theatre Co., Lima, Ohio	Tiffin to Feb. 1938
750	Closed since 1938	....	Leased	Tiffin Grand Theatre Co., Lima, Ohio	Tiffin to Feb. 1938
825	Part time after February, 1939	....	Leased	Etta Hodgkins, Port Huron, Mich.	None
802	....	....	Leased	H. Metcalf, Van Wert, O.	Ohio-Strand to Sept. 1935
710	Part time operation	....	Leased	Van Wert Amusement Co., Van Wert, Ohio	Ohio
1123	....	....	Leased	J. J. Kinney, Wooster, O.	Wallace to Nov. 1932
1100	Closed when acquired*	Open occasionally or part time as business warrants	Leased	City of Wooster	None
....	....	....	....	....	....
679	....	....	Owned	....	None
776	....	....	Leased	Clark M. Young & Hasel Young, Bowling Green, Ohio	None
348	....	Part time operation. Prior to and since acquisition	Leased	Clark M. Young & Hasel Young, Bowling Green, Ohio	None

ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
KENTUCKY							
Corbin	Kentucky	Lessee	100%	Nov. 1938	None		
Corbin	Hippodrome	Lessee	100%	Nov. 1938	None		
Corbin	Viv	Lessee	100%	May 1940	None		
Harlan	Margie Grand	Lessee	50%	Jan. 1941	Leon Scott—50%		
Lexington	Ben Ali	Owner	97% plus	Nov. 1936	Various small stockholders		
Lexington	Kentucky	Lessee	97% plus	Nov. 1936	Various small stockholders		
Lexington	State	Lessee	97% plus	Nov. 1936	Various small stockholders		
Lexington	Strand	Lessee	97% plus	Nov. 1936	Various small stockholders		
Lexington	Opera House	Lessee	97% plus	Oct. 1939	Various small stockholders		
Lexington	Ada Meade	Lessee	97% plus	Sept. 1940	Various small stockholders		

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
394	Part time until 4/4/41—closed since	....	Leased	R. Rowland, Corbin, Ky.	Viv Oct. 1939 to May, 1940
824	....	....	Leased	Corbin-Hippodrome, Inc., Corbin, Ky.	Viv Oct. 1939 to May, 1940
516	Closed Feb. to May, 1941	Repairs due to fire damage	Leased	H. Owens, Barbourville, Ky.	None
690	....	....	Leased	Margie Noe, Harlan, Ky.	New Harlan
1375	....	....	Owned		Opera House to Oct. 1939. Ada Meade to Sept. 1940
1257	....	....	Leased	M. Switow & Sons, Louisville, Ky.	Opera House to Oct. 1939. Ada Meade to Sept. 1940
895	....	....	Leased	M. Switow & Sons, Louisville, Ky.	Opera House to Oct. 1939. Ada Meade to Sept. 1940
1255	....	....	Leased	Wilson & McClung, Lexington, Ky.	Opera House to Oct. 1939. Ada Meade to Sept. 1940
1188	....	....	Leased	Southland Amusement Co., Lexington, Ky.	Ada Meade to Sept. 1940
668	....	....	Leased	Security Trust Co. Trustee, Nancy B. Clark	None

[fol. 294] ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold; or Remarks
Maysville	Russell	Lessee	100%	June 1938	S. Kaplan—40% to 12/7/40	....	....
Maysville	Washington	Lessee	100%	Jan. 1939	S. Kaplan—40% to 12/7/40	....	....
Maysville	Hollywood	Lessee	100%	Jan. 1939	S. Kaplan—40% to 12/7/40	....	....
Paris	Bourbon	Lessee	97% plus	Nov. 1936	Various small stockholders	....	....
Paris	Paris	Owner	97% plus	Land Dec. 1937 theatre completed Dec. 1939	Various small stockholders	....	....
Richmond	Madison	Owner	97% plus	Nov. 1936	Various small stockholders	....	....
Richmond	State	Lessee	97% plus	Nov. 1936	Various small stockholders	....	....
Richmond	Alhambra	Lessee		Nov. 1936		Dec. 1937	Converted into store—lease expired
Pikeville	Liberty	Lessee	100%	Aug. 1939	None	....	....
Middlesboro	Manring	Owner	100%	Lease Jan. 1939 fee Feb. 1941	None	....	....
Middlesboro	Brownie	Owner	100%	Lease Jan. 1939 fee Feb. 1941	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
700	....	.....	Leased	J. B. Russell, Maysville, Ky.	Community (opened Dec. 1940 and closed shortly thereafter). Washington & Hollywood to Jan. 1939
500	....	....	Leased	Washington Theatre Co., Maysville	Community
300	Part of deal for Hollywood Theatre	Permanently	Leased	Limestone Lodge K. of P., Maysville, Ky.	Community
634	Closed Feb. 1940	....	Leased	Paris Opera House Co., Paris, Ky.	None
932	....	....	Owned	....	None
987	....	....	Owned	....	None
666	Closed part time*	Open occasionally or part time as business warrants	Leased	Carr & Gibson, Richmond, Ky.	None
....	Closed since Dec. 1937—lease expired	Converted into store	.....	.....	
700	.....	....	Leased	Lon B. Rogers, Pikeville	Weddington
965	....	....	Lease Jan. 1939. Fee Feb. 1941	Leased & purchased from Chas. O. Brown	None
418	Part time operation in 1939 only—otherwise full time	....	Lease Jan. 1939. Fee Feb. 1941	Leased & purchased from Chas. O. Brown	None

[fol. 295] ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Maryland							
Cambridge	Arcade	Owner	90% plus	April 1938	Various small stockholders	....	....
Cambridge	State	Owner	90% plus	April 1938	Various small stockholders	....	....
Cambridge	Grand	Owner	90% plus	April 1938	Various small stockholders	....	....
Easton	Avalon	Owner	100%	Oct. 1938	None	....	....
Easton	Music Hall (Replaced by Easton Theatre)	Lessee	100%	Oct. 1938	None	May 1940	Talbot County Commissioners—Lease surrendered at request of County—acquired new site Jan. 1940—theatre under construction
Federalsburg	Federal	Owner	100%	Oct. 1938	None	....	....
Hurlock	Hurlock	Lessee	100%	Oct. 1938	None	....	....
St. Michaels	Marada	Lessee	100%	July 1939	None	....	....
Salisbury	Arcade	Lessee	100%	Sept. 1938	None	....	....
Salisbury	Wico-Mico	Owner	100%	Lease Sept. 1938—fee July 1940	None	....	....
Salisbury	Ritz (colored)		100%	Sept. 1940	None	....	....
Cumberland	Strand	Owner	100%	Contract 5/21/40 Fee 5/1/41	None	....	....

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
933	....	....	Owned	....	None
833	....	....	Owned	....	None
....	Closed When acquired*	....	Owned	....	None
616	....	....	Owned	....	None
....	Replaced by Easton Theatre, 646 seats, completed 7/25/41	....	Leased	....	None
642	....	....	Owned	....	None
471	....	....	Leased	R. Holt, Hurlock, Md.	None
524	....	....	Leased	C. B. Lee, St. Michaels	None.
914	....	....	Leased	Arcade Bldg. Corp., Salisbury, Md.	New & Ullman Theatres
601	....	....	Lease Sept. 1938—fee July 1940	Lessor—M. Gollner. Vendor—L. E. Hoppes	New & Ullman Theatres
462	....	....	....	....	....
1405	....	....	Owned	....	Liberty, Maryland, Embassy and Garden

[fol. 296] ANSWER TO INTERROGATORY No. 17—Continued

Town	Name of Theatre	Nature of Interest	Extent of Interest	Date Acquired	Other Interests If Any and Extent Thereof	Date Disposed of If No Longer Owned	Name of Purchaser If Sold, or Remarks
Delaware							
Laurel	Waller	Lessee	100%	Jan. 1939	None	....	....
Milford	Plaza	Owner	100%	Jan. 1939	None	....	....
Virginia							
Appalachia	Appalachian	Lessee	100%	Feb. 1941	None	....	....
Appalachia	State	Owner	100%	Feb. 1941	None	....	....

* Indicates more complete information on attached schedule. The information herein contained should be read together with the information

Answer to Interrogatory No. 18					Answer to Interrogatory No. 23
Seating Capacity	Closed Periods If Any	Remarks Re Closed Periods	Owned or Leased	If Leased Name of Lessor	Name of Present Opposition Theatre
716	Closed 4/4/40 to Feb. 1941	Theatre destroyed by fire and rebuilt	Leased	Wallen Estate, Laurel, Del.	None
1057	Closed 1/15/39 to 4/8/39	Remodelling and renovation	Owned	....	....
859	....	....	Leased	Appastone Realty Co., Appalachia, Va.	None
379	....	....	Owned	....	None

contained on the attached supplemental schedule.

[fol. 297] ANSWER INTERROGATORY No. 18

Supplemental schedule to Interrogatory No. 18 to be read together with the information furnished in answer to Interrogatory No. 18, wherever indicated by *.

Amsterdam, N. Y.—Regent Theatre (see page 1). Open full time except for summer closing through January 6th, 1940; January 7th to May 11th, 1940 operated Saturdays and Sundays only; closed May 11th, 1940 to February 15th, 1941; February 16th, 1941 to May 10th, 1941 operated Saturdays and Sundays only; closed May 11th, to August 29th, 1941; open full time from August 29th, 1941 to date.

Auburn, N. Y.—Jefferson Theatre (see page 1). Open full time through June 3rd, 1939; June 4th to September 16th, 1939 operated Saturdays and Sundays only; September 16th, 1939 to March 23rd, 1940 operated full time; March 24th, 1940 to December 31st, 1940 operated Fridays, Saturdays and Sundays only; January 1st, 1941 to date operated Saturdays and Sundays only.

Auburn, N. Y.—Strand Theatre (see page 1). Operated until the end of 1933 when closed and not operated thereafter; theatre portion demolished September 1939; part of deal with Shea interests.

Corning, N. Y.—State Theatre (see page 3). Operated continuously full or part time through 1938; thereafter operated Saturdays and Sundays only through March 12th, 1939 and closed thereafter.

Cortland, N. Y.—Cortland Theatre (see page 3). Closed upon acquisition and converted to commercial property December, 1936; part of deal for Temple Theatre.

Herkimer, N. Y.—Richmond Theatre (see page 5). Open to December 1926 then closed to 1929, when subleased to Robbins Enterprises, Utica, N. Y., re-acquired in 1932 on default of sublessee; closed since 1933—obsolete.

Newark, N. Y.—Crescent Theatre (see page 5). Open short periods 1926 through 1929 when Fox undertook operation; never opened after re-acquired from Fox in 1933; unusable as theatre in present condition.

Little Falls, N. Y.—Hippodrome Theatre (see page 6). 1937—part time, closed for summer; 1938—part time to February 5th, when closed; 1939—part time to May 20th, when closed for summer.

Lockport, N. Y.—Hi-Art Theatre (see page 6). Summer 1933 part time; 1937 to 1938 part time; 1939 to 1940 part time; closed for summer of 1939 and reopened on or about November 11, 1939 due to repair and reconstruction of street and damage to theatre in course of these repairs. [fol. 298] *Ogdensburg, N. Y.—Pontiac Theatre (see page 7).* Open part time 1926 through 1929; open full time 1930 while Strand Theatre, Ogdensburg, was undergoing remodelling and then part time to February 1931; closed February, 1931 to September, 1938 when remodelled and reopened part time; part time operation 1939, 1940 and 1941 except for summer closings during each of these years.

Oswego, N. Y.—Richardson Theatre (see page 7). History of this theatre shows part time operation by Schine before 1929; between 1929 and 1933 operated by Fox but defendants have no information as to whether it was closed or opened during that period, but at the time of re-acquisition by Schine in 1933 it was closed and has remained closed since.

Rochester, N. Y.—Plaza Theatre (see page 9). Part of same deal for Webster Theatre, Rochester—closed since acquisition and never operated. The history of this theatre shows that the Webster Theatre property and the Plaza Theatre property were owned by the same institution. The Plaza Theatre was leased to a different tenant at that time but because of the nature of that tenant's operation the fee owner terminated the lease and made a deal with the then operators of the Webster Theatre. In acquiring the Webster Theatre defendants were also compelled to take over the Plaza Theatre. Premises sold on September 11, 1941.

Athens, O.—Court Theatre. 1936—open part time to June 13th; closed balance of the year; 1937 open part time February and April, closed thereafter except for occasional part time use as business warrants. (see page 12)

Bellefontaine, O.—Strand Theatre (see page 12). Part time operation from July 1931 to December 1932; thereafter open for short periods in each year and closed balance of the time. Same deal as the Opera House.

Bucyrus, O.—Southern Theatre (see page 12). 1937—part time operation except summer closing; 1938—part time operation except summer closing; 1939—part time operation during summer; 1940—closed for summer.

Delaware, O.—Star Theatre (see page 12). 1938—open part time except closed for summer; 1939—open part time during summer; 1940—closed for summer.

Norwalk, O.—Forum Theatre (see page 14). Closed August 13, 1941 upon opening of new Norwalk Theatre.

[fol. 299] *Mt. Vernon, O.—Memorial Theatre (see page 14).* The history of this theatre shows that it is owned by the County, which awards leases at stated intervals on the basis of competitive bids. During periods indicated Schine was unsuccessful bidder.

Wooster, O.—Opera House (see page 15). Reopened upon Schine acquisition and operated full time—then part time to summer of 1936 when closed; reopened for part time operation to September 1938 when closed upon opening of new Wayne Theatre.

Richmond, Ky.—State Theatre (see page 17). 1937-1938—open part time except closing during month of August in each year; part of deal for Madison Theatre.

Cambridge, Md.—Grand Theatre (see page 18). Part of deal for other theatres in Cambridge. Although closed when acquired opened by Schine for occasional use.

Whenever the phrase "closed when acquired" is used either in the answer to Interrogatory No. 18 or in this supplemental schedule, it means that at the time of acquisition the theatre was not then being operated by the prior management.

[fol. 300]

ANSWER TO INTERROGATORIES 17(B) AND 17(C)

Theatres for which Schine defendants have licensed or booked film since August 7, 1931 or rendered management operative or consultative services.

The Information Contained Herein Is *Confidential*

Name and Location of Theatre	Nature of Services	Date Services Began	Date Services Terminated	Amounts Collected Annually		Terms of Arrangement	Other Consideration If Any
(Capitol—Ballston Spa, NY (State —Mechanicsville, NY (Capitol—Whitehall, NY (Ritz —Grandville, NY	Film buying	April, 1937 " " Dec. 1938	Presently in force	1937 1938 1939 1940	$ 3,700. (1) 7,600. 10,300. 10,800.	$200. per week (formerly $100. per week) (covering the four theatres)	None
(Palace Lake, Placid, NY (Lake Placid Club, Lake Placid, NY	Buying & Booking Film	May, 1926	May, 1936	1931 1932 1933 1934 1936 1937 1938 1939	$ 2,840.50(1) 541.50 3,336.79 3,339.43 850. 200. 0 1,800. (Settlement made for accrued charges due to date of expiration of contract)	5% of gross receipts	None
(Cla-Zel, Bowling Green, Ohio (Lyric, Bowling Green, Ohio	" " " "	June 1939	April 1, 1941	Cla-Zel— 6/11/39-3/1/41 Lyric — 6/11/39-3/1/41	$5,923.82(2) 1,567.29	5% of gross receipts plus percentage of profits over three-year average	None
Princess, Medina, Ohio	Buying, Booking and Supervising	November, 1937	April, 1939	1937 1938 1939	$ 275.08 (2) 1,861.78 492.99	5% of gross receipts	None
(Princess, Medina, Ohio (Medina Temple, Medina, Ohio	" " " "	April, 1939	Presently in force	1939 1940	1,520. (2) 2,060.	$40. per week	None
Wooster, Wooster, Ohio	" " " "	July, 1931	" " "	1931 1932 1933 1934 1935 1936 1937 1938 1939 1940	$ 615.78(2) 2,877.37 3,179.02 3,549.94 4,167.21 5,084.77 4,981.43 4,579.59 4,176.71 4,021.11	4% of gross receipts	None

[fol. 301]

Opera House, Wooster, Ohio	Buying, Booking and Supervising	1935	Presently in force	1940	4,021.11	
				1935	$ 68.73(2) 4% of gross receipts	None
				1936	403.55	
				1937	693.10	
				1938	308.45	
Wayne, Wooster, Ohio	" " " "	1938	" " "	1938	622.94(2) " " " "	None
				1939	1,249.34	
				1940	1,384.17	
Ritz, Tiffin, Ohio	" " " "	March, 1936	" " "	1936	3,626.91(2) 5% of gross receipts	None
				1937	5,025.07	
				1938	5,101.67	
				1939	5,424.98	
				1940	5,015.18	
Grand, Tiffin, Ohio	" " " "	" "	" " "	1936	833.96(2)	
				1937	1,286.76	
				1938	153.61	
				1939	3.75	
				1940	1.75 " " " "	None
Tiffin, Tiffin, Ohio	" " " "	Feb., 1930	" " "	1938	1,722.99(2)	
				1939	1,476.83 " " " "	None
				1940	1,657.59	
Forum, Norwalk, Ohio	" " " "	July, 1935	" " "	1935	845.48(2) " " " "	None
				1936	2,431.94	
				1937	3,263.50	
				1938	2,942.23	
				1939	2,769.72	
				1940	2,554.76	
Moose, Norwalk, Ohio	" " " "	1936	" " "	1936	43.23 " " " "	None
				1937	460.45	
				1938	524.37	
				1939	567.06	
				1940	614.25	
Castamba, Shelby, Ohio	" " " "	Sept., 1937	" " "	1937	575.99(2) " " " "	None
				1938	1,948.52	
				1939	1,887.25	
				1940	2,028.99	

[fol. 302]

ANSWER TO INTERROGATORIES 17(B) AND 17(C)

Theatres for which Schine defendants have licensed or booked film since August 7, 1931 or rendered management operative or consultative services.

The Information Contained Herein Is *Confidential*

Name and Location of Theatre	Nature of Services	Date Services Began	Date Services Terminated	Amounts Collected Annually		Terms of Arrangement	Other Consideration If Any
State, Fostoria, Ohio	Buying, Booking and Supervising	July, 1937	Presently in force	1937	$ 2,074.05(*)	5% of gross receipts	None
				1938	3,725.63		
				1939	3,675.92		
				1940	3,547.19		
Civic, Fostoria, Ohio	" " " "	July, 1937	" " "	1937	2,080.76(*)	" " " "	None
				1938	1,533.08		
				1939	1,630.07		
				1940	2,029.62		
Roxy, Fostoria, Ohio	" " " "	July, 1937	" " "	1937	430.57(*)	" " " "	None
				1938	43.42		
Strand, Delaware, Ohio	" " " "	Jan., 1936	Jan., 1940	1936	3,172.51(*)	" " " "	None
				1937	4,189.68		
				1938	4,208.32		
				1939	4,002.31		
Star, Delaware, Ohio	" " " "	March, 1938	January, 1940	1938	175.34(*)	" " " "	None
				1939	307.41		
Palace, Ashland, Ohio	" " " "	November, 1935	October, 1937	1935	120.20(*)	" " " "	None
				1936	2,501.16		
				1937	2,614.34		
Opera House, Ashland, Ohio	" " " "	May, 1936	October, 1937	1936	1,037.83(*)	" " " "	None
				1937	1,416.38		
Russell, Maysville, Ky.	" " " "	January, 1939	December 1940	1939	1,889.38(*)	" " " "	None
				1940	2,270.36		
Washington, Maysville, Ky.	" " " "	" " " "		1939	1,404.44(*)	" " " "	None
				1940	1,060.87		
Hollywood, Maysville, Ky.	" " " "	" " " "				" " " "	None
Liberty, Pikeville, Ky.	" " " "	November, 1938	August, 1939	1/1/39–8/19/39	1,386.93(*)	" " " "	Option to purchase one-half interest
Margie Grand, Harlan, Ky.	" " " "	November, 1938 (prior contract) January, 1941 (new contract)	January, 1941 (prior contract) New contract presently in force	1/1/39–12/31/40	5,532.47	" " " "	Option to purchase one-half interest

[101. 3035]

Appalachian, Appalachia, Va.	Buying, Booking and Supervising	May, 1940	February 1941	6/8/40–8/3/40	$ 297.36(1) (payments ceased)	5% of gross receipts	Option to purchase one-half interest
Big Stone, Big Stone Gap, Va.	" " " "	" "	" "	7/8/40–8/3/40	208.36(1) (payments ceased)	" " " "	" " "
Webster, Rochester, N. Y.	Buying and Booking	August, 1927	January, 1933	1931	1,100.00	$50. per week	None
				1932	2,600.00		
Rustic, Sacandaga Park, NY	" " "	Summer, 1937	Presently in force	1937	250.00	—	None
				1938	250.00		
				1939	250.00		
				1940	250.00		
(Palace, Lockport, N. Y.	" " "	1927	December, 1932	Palace(1931–	405.00	—	None
(Rialto, Lockport, N. Y.				(1932–	780.00		
				Rialto(1931–	255.00		
				(1932–	660.00		
(Liberty, Rochester, N. Y.	" " "	1928	August, 1933	1931	850.00	—	None
(Riviera " " "				1932	1,950.00		
(State " " "				1933	950.00		

(1) Denotes agreement with Schine Chain Theatres, Inc.
(2) Denotes agreement with Balpik Theatre Corporation.
(3) Denotes agreement with Schine-Lexington Corp.
(4) Denotes agreement with Schine-Virginia Corp.

ANSWER TO INTERROGATORY No. 19

With respect to each financial interest acquired by the defendant on or after August 31, 1931, with respect to theatres listed in answer to Interrogatory No. 17, the following information is herewith furnished:

Name of Town	Name of Theatre	Date Acquired	From Whom Acquired	Details if disp
NEW YORK:				
Amsterdam	Regent Theatre	September 1935 (outstanding 50% interest)	(Originally acquired 50% interest in 1928 (by purchase from Pat Casey, 1600 Broadway, (New York City, Leslie E. Thompson, 1270 (Sixth Avenue, New York City, J. Henry (Walters, 1270 Sixth Avenue, New York City, (Sumal Operating Co. and Schuyler Securities (Co.—then purchased outstanding 50% inter- (est in September 1935 from M. A. Shea, (1540 Broadway, New York City, and Maurice (Goodman, 580 Fifth Avenue, New York City.	
Amsterdam	Rialto Theatre	September 1935 (outstanding 50% interest)	(	
Amsterdam	Strand Theatre	September 1935 (outstanding 50% interest)	(	
Auburn	Palace Theatre	August 1937 (outstanding 50% interest)	(Purchased outstanding 50% interest in (August 1937 from M. A. Shea, 1540 (Broadway, New York City, and Maurice (Goodman, 580 Fifth Avenue, New York (City.	
Auburn	Jefferson Theatre	August 1937 (outstanding 50% interest)	(	
Auburn	Strand Theatre	August 1937 (outstanding 50% interest)	(	
Ballston Spa	Capitol Theatre	April 1937	William Benton, Saratoga, N. Y.	
Buffalo	Granada Theatre	Fee, June 1939	L. N. Whissel Lumber Co., Buffalo, N. Y.	
Corning	Palace Theatre	April 1938	By lease from Fred Gerber, Corning, N. Y.	
Cortland	Temple Theatre	September 1932	(Stock purchase N. Kornblite,	
Cortland	Cortland Theatre	September 1932	(Binghamton, N. Y.	
Glens Falls	Rialto Theatre	Lease March 1933 Fee January 1937	Lease and purchase from Rialto Theatre Corp., Glens Falls, N. Y.	
[fol. 305]				
Glens Falls	Empire Theatre	June 1933	By lease from Empire Real Estate Co., Glens Falls, N. Y.	
Glens Falls	Paramount Theatre	June 1940	By lease from Paramount Pictures, Inc., New York City	
Hamilton	State Theatre	August 1934	By purchase from Katherine Sheldon, Hamilton, N. Y.	
Hudson Falls	Strand Theatre	July, 1935	By purchase from J. Fitzgerald, Hudson Falls, N. Y.	
Ilion	Capitol Theatre	August 1937	By purchase from Young & Whitney, Inc., Ilion, N. Y.	
Ilion	Temple Theatre	August 1937	By purchase from Young & Whitney, Inc., Ilion, N. Y.	
Little Falls	Hippodrome Theatre	June 1936	By lease from Odd Fellows Association, Little Falls, N. Y.	
Lockport	Palace Theatre	October 1936	By purchase from John R. Osborn, Batavia, N. Y.	

Malone	Plaza Theatre	February 1941	By lease from M. Boumansour, Malone, N. Y.	
Penn Yan	Elmwood Theatre	September 1936	By purchase from Estate of former owner, name not available.	
[fol. 306]				
Perry	Auditorium Theatre	October 1936	By assignment of lease from John Osborn, former operator. Renewal of lease with Town of Perry, owner.	
Rochester	Dixie Theatre	August 1932	By lease from Dixie Theatre Corporation, Rochester, N. Y.	
Rochester	Liberty Theatre	Fee, February 1939	By purchase from Fennyvessy, Rochester, N. Y.	
Rochester	Cameo Theatre	May 1936	By purchase from Referee on foreclosure sale.	
Rochester	Lake Theatre	January 1936	By lease from owner.	
Rochester	Madison Theatre	February 1939	By purchase from Fennyvessy, Rochester, N. Y.	
Rochester	Monroe Theatre	February 1939	By purchase from Fennyvessy, Rochester, N. Y.	
Rochester	West End Theatre	February 1939	By purchase from Fennyvessy, Rochester, N. Y.	
Rochester	Webster Theatre	September 1940	By purchase from Bemat Amusement Co., Inc., Rochester, N. Y.	
Rochester	Plaza Theatre	September 1940	By purchase from Bemat Amusement Co., Inc., Rochester, N. Y.	
Seneca Falls	Strand Theatre	September 1935	By stock purchase from Berinstein Theatres, Inc., Seneca Falls, N. Y.	

Sold to Sharp & Huuram d.b.a. Ol
Fashioned Cracker Co., Rochester,
Total consideration $7,500. payabl
cash and part mortgage.

ANSWER TO INTERROGATORY No. 19—Continued

Name of Town	Name of Theatre	Date Acquired	From Whom Acquired	Details if disposed of
[fol. 307]				
Seneca Falls	Seneca Theatre	April 1936	By purchase from Seneca Falls Saving Bank	
Syracuse	Keith Theatre	August 1935	Joint operation with B. F. Keith Corporation.	
Syracuse	Paramount Theatre	August 1935	Joint operation with B. F. Keith Corporation.	
Syracuse	Strand Theatre	August 1935	Joint operation with B. F. Keith Corporation.	Lease expired Aug. 31, 1941 and not renewed.
Syracuse	Palace Theatre	February 1939	Joint operation with B. F. Keith Corporation	
Syracuse	James Theatre	June 1940	Joint operation with B. F. Keith Corporation	
Syracuse	Empire Theatre	January 1941	Joint operation with B. F. Keith Corporation	
Tupper Lake	State Theatre	January 1935	By lease from Donovan & Prespare, Tupper Lake, N. Y.	
Watertown	Palace Theatre	September 1936	By assignment of lease from Graham A. Ludlow, former operators, Watertown, N. Y.	
Whitehall	Capitol Theatre	April 1937	William Benton, Saratoga, N. Y.	
Mechanicville	State Theatre	April 1937	William Benton, Saratoga, N. Y.	
Granville	Ritz Theatre	December 1938	By purchase from Adolph Kohn, Granville, N. Y.—Part of Benton-Schine operation.	
Clifton Springs	Palace Theatre	August 1941	By lease from Josephine Williamson, Clifton Springs, N. Y.	
[fol. 308]				
Ashland	Opera House	May 1936	By lease from City of Ashland	Theatre condemned and dismantled by City.
Ashland	Palace Theatre	November 1935	By assignment of lease from B. Bickert, Ashland, Ohio. Thereafter, in October 1927 by purchase of Bickert's 25% interest.	
Ashland	Ohio Theatre	July 1938	By assignment of lease from John Bahas, Ashland, Ohio.	
Athens	Athena Theatre	September 1935	By purchase from Majestic Theatre Co.	
Athens	Court Theatre	January 1936	Stock purchase from E. Custer and H. Bieberson, Athens, Ohio	
Athens	Ohio Theatre	January 1936	Stock purchase from E. Custer and H. Bieberson, Athens, Ohio.	
Bucyrus	Southern Theatre	September 1935	By stock purchase of Crawford Theatre Co. from N. Charnas.	
Bucyrus	State Theatre	September 1935		
Delaware	Strand Theatre	January 1936	By purchase of one-half interest from H. Bieberson and outstanding one-half interest on January 11, 1940.	Lease cancelled by owners.

Delaware	Star Theatre	March 1938	By purchase from John Buchman, Delaware, Ohio, who was on monthly tenancy.
Fostoria	Civic Theatre	May 1936	By stock purchase of Civic Theatre, Inc. from C. Kahn, Fostoria, Ohio.
[fol. 309]			
Fostoria	Roxy Theatre	May 1936	By stock purchase of Civic Theatre, Inc. from C. Kahn, Fostoria, Ohio.
Fostoria	State Theatre	July 1937	By purchase of interest of A. & U. Buck, et al, Fostoria, Ohio.
Kent	Opera House	June 1936	By lease from J. Palfi, Kent, Ohio.
Kent	Kent Theatre	December 1937	By purchase from E. Flanigon, as Trustee of owner, Kent, Ohio.
Medina	Princess Theatre	September 1937	By purchase of 25% interest from B. Yudelevitz and Fine of Medina, Ohio. Then formed corporation with operators of Temple Theatre.
Medina	Medina Temple Theatre	April 1939	By stock purchase original issue of operating corporation.
Mt. Vernon	Vine Theatre	January 1934	By lease from A. S. Payne, Cleveland, Oho.
Mt. Vernon	Memorial Theatre	February 1934 Reacquired January 1941	First by assignment of lease which expired September 30, 1934 from one Platt—reacquired by lease from Board of Trustees, Mt. Vernon, Ohio, after competitive bidding.
Norwalk	Forum Theatre	July 1935	By stock purchase of two-thirds interest from W. K. Selman, Steel, et al.
Norwalk	Moose Theatre	December 1936	By purchase jointly with W. K. Selman, et al, from Moose Lodge.

ANSWER TO INTERROGATORY No. 19—Continued

Name of Town	Name of Theatre	Date Acquired	From Whom Acquired	Det
[fol. 310]				
Ravenna	Ravenna Theatre	December 1937	By purchase from E. Flanigon, as Trustee.	
Ravenna	Ohio Theatre	December 1937	By purchase from E. Flanigon, as Trustee.	
Shelby	Castamba Theatre	September 1937	By purchase of 50% interest from H. Shreffler, Shelby, Ohio	
Tiffin	Ritz Theatre	March 1936	By stock purchase of one-half interest from Britton & Silverman, Tiffin, Ohio.	
Tiffin	Grand Theatre	March 1936	By stock purchase of one-half interest from Britton & Silverman, Tiffin, Ohio.	
Tiffin	Tiffin Theatre	February 1938	By assignment of lease from Lyon Theatre Corp.—Part of Schine operation with Britton & Silverman Tiffin, Ohio.	
Van Wert	Van Wert Theatre	February 1935	By lease from H. Metcalf, Van Wert, Ohio.	
Van Wert	Strand Theatre	September 1935	By lease from Van Wert Amusement Co., Van Wert, Ohio.	
Wooster	Opera House	September 1933	Part of Schine operation with J. J. Kinney, Wooster, Ohio, and E. P. Mott, Wooster, Ohio—50% interest in operating corporation by original issue.	
Bowling Green	Cla-zel Theatre	April 1941	By lease from Clark M. Young and Hazel Young, Bowling Green, Ohio.	
[fol. 311]				
Bowling Green	Lyric Theatre	April 1941	By lease from Clark M. Young and Hazel Young, Bowling Green, Ohio.	
KENTUCKY:				
Corbin	Kentucky Theatre	November 1938	By stock purchase from various local stockholders.	
Corbin	Hippodrome Theatre	November 1938	By stock purchase from various local stockholders.	
Corbin	Viv Theatre	May 1940	By assignment of lease from M. K. Murphy, former operator, Corbin, Ky.	
Harlan	Margie Grand Theatre	January 1941	By purchase of 50% interest from Leon Scott, Harland, Ky.	
Lexington	Ben Ali Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)	
Lexington	Kentucky Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)	
Lexington	State Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)	

			stockholders. (Phoenix Amusement Co.)
Lexington	Strand Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Lexington	Opera House	October 1939	By purchase and lease from Southland Amusement Co., Lexington, Ky.
Lexington	Ada Meade Theatre	September 1940	By assignment of lease from Switow & Sons, Louisville, Ky.
Maysville	Russell Theatre	June 1938	By lease from J. B. Russell, Maysville, Ky.—in joint operation with S. Kaplan until December 7, 1940.
[fol. 312]			
Maysville	Washington Theatre	January 1939	By original issue of operating corporation—in joint operation with S. Kaplan, former operator—thereafter by purchase of Kaplan's outstanding 40% interest on December 7, 1940.
Maysville	Hollywood Theatre	January 1939	By original issue of operating corporation—in joint operation with S. Kaplan, former operator—thereafter by purchase of Kaplan's outstanding 40% interest on December 7, 1940.
Paris	Bourbon Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Richmond	Madison Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Richmond	State Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Richmond	Alhambra Theatre	November 1936	By stock purchase from various local stockholders. (Phoenix Amusement Co.)
Pikeville.	Liberty Theatre	August 1939	By stock purchase from John B. Elliott, C. W. MayHugh and Anna Bell Ward, Lexington, Ky. (Liberty Amusement Company.)
Middlesboro	Manring Theatre	By lease, January 1939 By fee, February 1941	Charles O. Brown, Middlesboro, Ky.
Middlesboro	Brownie Theatre	By lease, January 1939 By fee, February 1941	Charles O. Brown, Middlesboro, Ky.

ANSWER TO INTERROGATORY No. 19—Continued

Name of Town	Name of Theatre	Date Acquired	From Whom Acquired	Details if disposed of
[fol. 313]				
MARYLAND:				
Cambridge	Arcade Theatre	April 1938	By stock purchase of 90% from group of local stockholders.	
Cambridge	State Theatre	April 1938	By stock purchase of 90% from group of local stockholders.	
Cambridge	Grand Theatre	April 1938	By stock purchase of 90% from group of local stockholders.	
Easton	Music Hall Theatre	October 1938	By lease from Talbot County Commissioners.	Surrendered lease May 1940 at request of County.
Easton	Avalon Theatre	October 1938	By purchase from Talbot Theatres, Inc., former operator, Easton, Md.	
Easton	Theatre under construction	January 1940	By purchase from Easton National Bank (to replace Music Hall surrendered to County).	
Federalsburg	Federal Theatre	October 1938	By purchase from Federalsburg Amusement Co., former operator, Federalsburg, Md.	
Hurlock, Md.	Hurlock Theatre	October 1938	By stock purchase from Marsh Gollner, Salisbury, Md.	
St. Michaels	Marada Theatre	July 1939	By lease from C. B. Lee, St. Michaels, Md.	
Salisbury	Arcade Theatre	September 1938	By assignment of lease from Lee Insley, Salisbury, Md.	
Salisbury	Wicomico Theatre	September 1938	By assignment of lease from Marsh Gollner, Salisbury, Md., thereafter purchase of fee from L. E. Hoppes.	
[fol. 314]				
Cumberland	Strand Theatre	May 21, 1940 Fee, May 1, 1941	By purchase from Cumberland Amusement Company, Cumberland, Md.	
DELAWARE:				
Laurel	Waller Theatre	January 1939	By lease from Waller Estate, Laurel, Delaware.	
Milford	Plaza Theatre	January 1939	By purchase from Milford Playhouse, Inc., Milford, Delaware.	
VIRGINIA:				
Appalachia	Appalachian Theatre	February 1941	By purchase of interest of one Murphy Appalachia, Va.	
Appalachia	State Theatre	February 1941	By purchase of interest of one Murphy, Appalachia, Va.	
[fol. 315]				

[fol. 316] ANSWER TO INTERROGATORY No. 22

Names of towns in which the theatres listed in answer to Interrogatory 17 are located, where no theatres other than those in which the defendant owns a financial interest have been operated at any time since August 7, 1931.

We list below towns in which there have been no theatres operated other than those in which the defendant owns a financial interest, and in which no theatres other than those in which the defendant owns a financial interest have been operated since the defendant acquired its interest. The defendant is unable to state as to theatres acquired since 1931 whether any other theatres were operated in said towns prior to acquisition by defendant of its interest therein.

New York

Bath
Ballston Spa
Mechanicville
Whitehall
Granville
Oneonta
E. Rochester
Fairport
Gloversville
Perry
Canandaigua
Newark
Hudson Falls
Hamilton
Ilion
Ogdensburg
Saranac Lake
Herkimer
Salamanca
Penn Yan

Maryland

Cambridge
Easton
Federalsburg
Hurlock
St. Michaels

Delaware

Milford
Laurel

Ohio

Ravenna
Bowling Green
Piqua

Kentucky

Paris
Richmond
Middlesboro

[fol. 317]

ANSWER TO INTERROGATORY NO. 31.

List of real estate in which the defendant has had any interest, either by ownership or option to purchase, lease or option to lease, or otherwise, at any time since August 1, 1931, with the exception of real estate on which a threatre has been located continuously during the entire period of defendant's interest therein indicating location, nature of interest, date of acquisition, from whom acquired, date on which interest terminated, nature of any improvements during the period of defendant's interest.

Following is a chart indicating the properties on which a threatre has not been located continuously since 1931, and indicating the improvements now existing on said property:

Location	Nature of Interest	Date of Acquisition	From whom Acquired	Date on which interest terminated	Nature of Improvement now existing.
South Street, Auburn, N. Y.	Fee	December, 1923	Second Presbyterian Church		New Auburn Theatre completed September 1938
Water Street, Auburn, N. Y.	Fee	March, 1927	Fitzer-Auburn, Inc.		Commercial Building
Main Street, Canandaigua, N. Y.	Fee	November, 1939	Joseph Soppe		Remodeled into theatre
State Street, Carthage, N. Y.	Fee	March, 1935	M. Quinn		Store and commercial building
Main Street, Cortland, N. Y.	Fee	November, 1930	E. M. Byrne		Vacant land—used as parking lot for State Theatre adjoining
Groton Avenue, Cortland, N. Y.	Fee	September, 1932	N. Kornblite		Store and commercial building
Glens Falls, N. Y.	Fee	January, 1937	Rialto Theatre Co.		Rialto Hotel Building
Fulton Street, Gloversville, N. Y.	Fee	July, 1937	Getman Estate		Commercial Building
Main Street, Gloversville, N. Y.	Fee	1925	F. Kathan	1932	Kathan Hotel Building
Main Street, Gloversville, N. Y.	Fee	April, 1920	Cady & Dartch		Commercial Building
First Street, Ilion, N. Y.	Fee	August 1937	Young & Whitney, Inc.		Commercial Building
Walnut Street, Lockport, N. Y.	Fee	April 1923	H. F. Thurston		Store Building
Pearl St., Malone, N. Y.	Option to buy or lease	January 10, 1938	Teresa Hinds	February 10, 1939	Commercial Building
Bridge & Second Sts., Oswego, N. Y.	Fee	June, 1937	D. V. Hardie, et al.		New Oswego Theatre completed January 1941
[fol. 318]					
Bridge Street, Oswego, N. Y.	Fee	November, 1934	Oswego County Savings Bank		Store and commercial building
West Second Street, Oswego, N. Y.	Fee	October, 1923	H. Pierce		Garage building
Oswego, N. Y.	Fee	February, 1936	Security Building & Loan Association	June, 1937	Commercial building Dime Bank Building
Main Street, Perry, N. Y.	Fee	July, 1935	Davis		Vacant land
Clinton Avenue, Rochester, N. Y.	Leased	July, 1937	Moore		Vacant land adjoining Cameo Theatre. Used for theatre parking.
Ackerman Street, Rochester, N. Y.	Fee	September, 1940	Bemat Amusement Co.		Vacant land adjoining Webster Theatre. Used for theatre parking.
Main Street, Salamanca, N. Y.	Fee	July, 1927	Ambuski, et al.		None—used as parking lot.
Center Street, Ashland, Ohio	Fee	November, 1940	S. Galvin		Vacant land—Theatre to be constructed.
Main Street, Norwalk, Ohio	Fee	March, 1940	Smith & Williams		New theatre now under construction.
High Street, Seaford, Del.	Fee	August, 1939	Kent & Sussex Building & Loan Association		Residential property consisting of multiple family dwelling.
Washington St., Easton, Md.	Fee	January, 1940	Easton National Bank		New theatre under construction to replace Music Hall Theatre.
Main Street, Corbin, Ky.	Contract to lease	December 2, 1938	G. C. Scott	January, 1939	Vacant land
Lexington, Kentucky	Lessee	November, 1936	Phoenix Amusement Co.	April, 1940	Leonard Hotel Building
Main Street, Paris, Kentucky	Lessee	September, 1939	Schwartz		Vacant land
Main Street, Paris, Kentucky	Fee	October, 1937	O'Brien & Stuart		New Paris Theatre completed December, 1939
[fol. 319]					
Richmond, Kentucky	Lessee	November, 1936	Phoenix Amusement Co.	December, 1937	Store building

[fol. 315]

As to theatres built by the Schine defendants, the following information is furnished pursuant to stipulation:

Name of Town	Name of Theatre	Date of Completion	Cost of construction, including land, building and equipment
NEW YORK:			
Auburn	Auburn Theatre	September 1938	$242,716.88
Canandaigua	Lake Theatre	April 1941	37,109.05
Oswego	Oswego Theatre	January 1941	253,859.00
OHIO:			
Bucyrus	Bucyrus Theatre	March 1936	90,485.96
Mt. Vernon	Vernon Theatre	April 1938	Construction begun by defendant. During construction lease and partially completed building turned over to James and Percy Upham of Mt. Vernon, Ohio, who completed the building and leased same to defendant.
Norwalk	Norwalk Theatre	August 13, 1941	$124,250.00 (estimated and approximate)
Wooster	Wayne Theatre	September 1938	56,426.63
KENTUCKY:			
Paris	Paris Theatre	December 1939	94,683.69
MARYLAND:			
Easton	Easton Theatre	July 25, 1941	52,091.00 (estimated and approximate).

[fol. 320] ANSWER TO INTERROGATORY No. 32

The facts contained in the foregoing answers to each of the interrogatories were supplied by or under the supervision of the following persons:

1. John A. May, Gloversville, N. Y.
   Comptroller of Schine Chain Theatres, Inc.
   President of Schine Circuit, Inc.

2. F. D. Thompson, Gloversville, N. Y.
   Assistant Secretary of Schine Chain Theatres, Inc.
   Assistant Secretary and Assistant Treasurer of Schine Circuit, Inc.

3. Howard M. Antevil, Gloversville, N. Y.
   Member of Legal Department of Schine Circuit, Inc.

[fol. 321] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

STIPULATION

It is hereby stipulated and agreed between the plaintiff and the defendant Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis M. Schine and John A. May, by their respective counsel, that the trial of the above-entitled cause may be postponed until May 19, 1944, and a temporary order entered herein, a copy of which is attached hereto and expressly made a part hereof.

Robert L. Wright, Attorney for the Plaintiff. Willard S. McKay, John Fletcher Caskey, Pehney & Penney, Attorneys for the Defendants.

[fol. 322] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

TEMPORARY ORDER

The United States of America having filed its complaint herein on August 7, 1939, and its amended complaint on May 12, 1941; the defendants: Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May[1] having appeared and filed

[1] The above-named defendants are referred to hereinafter as the consenting defendants.

their answers to such complaint and to such amended complaint, the case having been called for trial on May 19, 1942, and all of said parties having stipulated to a postponement of said trial until May 19, 1944, and all of said parties having severally consented to the entry of this temporary order herein, without trial or adjudication of any issues of fact or law herein, and without admission by any party in respect of any such issue,

Now, therefore, before any testimony has been taken herein, and without trial or adjudication of any issue of [fol. 323] fact or law herein, and upon consent of all parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I. The trial of this case is postponed until May 19, 1944, and all proceedings herein are suspended until said date, except as hereinafter provided in this order.

II. The following temporary order shall be in effect from the date hereof to and including May 19, 1944.

1. *Jurisdiction.*

The Court has jurisdiction of the parties hereto; and for the purposes of this order and of proceedings for the enforcement thereof, the Court has jurisdiction of the subject matter hereof and the complaint states a cause of action against the defendants under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies."

The plaintiff not having offered any proof of its allegations that defendants have violated the anti-trust laws, and defendants having denied each and every such allegation, this Court has not determined or adjudicated and by this order does not determine or adjudicate, and this is not an order or decree to the effect that any of said defendants has violated or is now violating any of such laws, or any other statute, and this order relates solely to future conduct herein below specified and is not based upon any finding, determination, or adjudication that any right or statute has yet been or is now being violated.

2. *Enjoinment.*

Each consenting defendant, its successors, officers, directors, agents and employees, and all persons and corporations acting under, through, or for it, hereby is and are [fol. 324] enjoined from doing the acts prohibited by this order, and is and are directed to do the acts thereby required.

3. *Independent Exhibitors.*

The term "independent exhibitor" wherever used in this order shall mean an exhibitor who is not in any way, directly or indirectly, affiliated with any of the consenting defendants, or with a distributor or producer of motion pictures, or with a circuit of fifteen or more theatres.

4. *Divestiture of Theatres.*

Within one year from the date hereof the consenting defendants will dispose of all their interests in the following theatres which have been acquired since the filing of this suit on August 7, 1939, the intent hereof being that the consenting defendants will reinstate the status of each such theatre as it existed immediately prior to said acquisition. These interests are as follows:

(1) The fee of the Webster Theatre, Rochester, N. Y.

(2) The fee of the Strand Theatre, Cumberland, Md.

(3) The leasehold on the Plaza Theatre, Malone, N. Y.

(4) The leasehold on the Memorial Theatre, at Mt. Vernon, Ohio.

(5) The leasehold on the Paramount Theatre, Glens Falls, N. Y.

(6) The leasehold on the Opera House, Lexington, Ky.

(7) The leasehold on the Ada Meade Theatre, Lexington, Ky.

(8) The leasehold on the Palace Theatre, Clifton Springs, N. Y.

(9) The leasehold on the Scotia Theatre, Scotia, N. Y.

[fol. 325] (10) The leasehold on the Viv Theatre, Corbin, Ky.

(11) The fee of the State Theatre, and the leasehold on the Appalachia Theatre, Appalachia, Va., to be handled as a single transaction.

(12) The leasehold of the Cla-Zel Theatre and the Lyric Theatre, Bowling Green, Ohio. The consenting defendants may retain the interest which they had in said theatres immediately prior to the acquisition of said leaseholds.

(13) A fifty per cent (50%) interest in the leasehold of the Margie Grand Theatre, Harlan, Ky. The consenting defendants may retain the interest which they had in said theatre immediately prior to the acquisition of said leasehold interest.

(14) The leasehold on the Liberty Theatre, Pikeville, Ky. The consenting defendants may retain the interest which they had in said theatre immediately prior to the acquisition of said leasehold interest.

A schedule containing a description of each of said interests and the name and address of the person from whom it was acquired, the name and address of the last operator prior to any acquisition, and its cost to the defendants, is attached hereto as Exhibit A. Attached hereto as Exhibit B is a schedule of any other capital investments, including rent deposits, which have been made by the defendants in said theatre properties since their acquisition. The defendants agree that promptly after the entry of this order, they will offer to the persons from whom such interests were acquired the opportunity of reacquiring the same for the amount of the capital investment of the defendants therein, as shown upon said Exhibits A and B. Such offer

shall be in writing and shall remain open for 20 days after the making thereof, unless sooner rejected in writing by [fol. 326] the former owner. Where the last operator prior to such acquisition is not the person from whom said interest was acquired, such offer shall be made to said last operator.

As to any theatre or interest therein not reacquired by the former owner or operator under the above provisions, the consenting defendants shall generally offer the same to "independent exhibitors" for the same purchase price and upon fair and reasonable terms and conditions, including the payment by the purchaser of a reasonable commission when the services of a broker are necessary to consummate the sale. Fair and reasonable terms and conditions shall, of course, include adequate assurance to the consenting defendants that the transaction will be consummated. The Court shall, if petitioned by any party, upon notice to all other parties and such hearing as it may deem appropriate, enter such orders as it may deem appropriate, approving or disapproving the terms and conditions of any divestiture provided for herein.

Within thirty (30) days after the date hereof and at the end of each thirty (30) days thereafter, the consenting defendants will furnish to the Department of Justice a detailed report showing the efforts which have been made to dispose of the above-described theatre interests and the names and addresses of persons to whom the above described theatre interests have been sold during each such period.

If at any time it shall appear that the defendants are not exercising due diligence to comply with the provisions of this section of this order, the plaintiff may petition the Court for such further order as may be just in the premises, but no order shall be made which would require the consenting defendants to dispose of any theatre interest at less than the capital investment therein as set forth [fol. 327] in said Schedules A and B, and subject to the conditions hereinabove set forth.

If at the end of one year from the date of the entry of this order the consenting defendants have been unable with due diligence to dispose of all of the above-described theatre interests, they shall file with the Court a complete report stating (1) the theatre interests disposed of; (2) the theatre interests which they have been unable to dispose

of; and (3) the efforts which have been made to dispose of the same.

Such report should be filed on notice to the plaintiff, which notice shall include a copy thereof, and the Court shall thereupon grant such extension of time or make such further order as may be just in the premises but no order shall be made which will require the consenting defendants to dispose of any theatre interest at less than the capital investment therein as set forth in said Schedules A and B.

5. *Acquiring Theatres.*

No consenting defendant shall acquire any theatre or interest therein except where such defendant can satisfy the Court that such acquisition will not be against the public interest after giving due consideration to the competitive situation, if any. Any application for an order permitting such acquisition shall be made to the United States District Court for the Western District of New York, upon ten days notice to the plaintiff, and the parties shall have an opportunity to present evidence and be heard by the Court before any such order permitting such acquisition may be entered. Except as to the theatres referred to in Section Four hereof, the provisions of this Section Five shall not prevent the consenting defendants from renewing leases on theatres now operated by them.

[fol. 328] 6. *Franches.*

No consenting defendant shall enter into any franchise or other license agreement which shall license the exhibition of motion pictures released by any distributor during a period of more than one year. All existing franchises or other license agreements between consenting defendants and any distributor, which license the exhibition of motion pictures by any distributor during a period of more than one year which are now in effect are hereby declared to be void as to all motion pictures released after the thirtieth day following the entry of this order, and each consenting defendant is hereby enjoined from enforcing any of the provisions of any such franchise or license agreement.

7. *Licensing of Motion Pictures.*

No consenting defendant will condition the licensing of motion pictures to any theatre or theatres owned or oper-

ated by the consenting defendants which is in direct competition with an "independent exhibitor" in the same city, town or village, upon the licensing of motion pictures to any theatre or theatres owned or operated by the consenting defendants in a city, town or village in which all of the motion picture theatres are owned or operated by the consenting defendants.

Proceedings based upon an alleged violation of this Section, brought by the United States, shall be limited to such further specific injunctive relief against the consenting defendant complained against as the Court shall deem appropriate, and if the Court shall find that any "independent exhibitor" has been injured as a direct result of such violation, it may award to such "independent exhibitor" such damages as it shall deem appropriate.

[fol. 329] 8. *Compliance.*

For the purpose of securing compliance with this order, and for no other reason, duly authorized representatives of the Department of Justice shall, on the written request of the Attorney General or the Assistant Attorney General in charge of antitrust matters, and on notice to any consenting defendant reasonable as to time and subject matter, made to such defendant at its principal office, and subject to any legally recognized privilege, (1) be permitted access, during the office hours of such defendants, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of such defendant, relating to any of the matters contained in this order, and (2) subject to the reasonable convenience of such defendant, and without restraint or interference from it, be permitted to interview its officers or employees regarding any such matters, at which interview counsel for the officer or employee interviewed and counsel for the company may be present. Without in any way limiting the rights granted in the foregoing provisions of this Section each of the consenting defendants shall keep at its principal office current records, which shall be accessible for the purpose aforesaid, showing:

(1) All written offers received by it for the purchase of any of the motion picture theatre interests listed and described in Section 4 thereof;

(2) All agreements or copies thereof relating to the licensing of motion pictures for exhibition in any of the theatres operated by it;

(3) All records relating to the acquisition by it subsequent to the entry of this order of any motion picture theatre or interest therein.

[fol. 330] Information obtained pursuant to the provisions of this Section shall not be divulged by any representative of the Department of Justice to any persons other than a duly authorized representative of the Department of Justice except in the course of legal proceedings to which the United States is a party, or as otherwise required by law.

9. *Proceedings During Period of Order.*

Plaintiff has represented to the Court, and each of the consenting defendants has consented to the entry of this order upon the condition, that plaintiff will not for a period of two years after the entry of this order, either in this action or any other action or proceeding against any such defendant seek, except as provided herein, the relief or any part thereof prayed in the amended complaint filed May 12, 1941.

Any of the parties to this order may apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this order, for the enforcement of compliance therewith, and for the punishment of violations thereof;

Any of the parties to this order may apply to the Court at any time for a modification of this order in order to conform it to any Act of Congress enacted after the entry of this order;

Any consenting defendant may make any application to the Court referred to in any provision of this order.

Whenever obligations or prohibitions are imposed upon the defendants by the laws of any State or by rules or regulations made pursuant thereto, with which defendants by law must comply, the Court, upon application of the defendants, or any of them, shall from time to time enter orders relieving the defendants from compliance with any [fol. 331] requirements of this order in conflict with such laws, rules or regulations and the right of the defendant to make such applications and to obtain such relief is expressly granted.

In the event that at any time after the entry of this order, a decree or order shall be entered by consent in any Court of the United States, in an action brought by the United States of America against an operator of motion picture theatres under the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies," which decree or order shall contain terms more favorable to the defendant therein than the terms set forth in this order, the consenting defendants herein shall have the right to apply to the Court for an order modifying the provisions of this order to conform to the terms and provisions of such more favorable decree or order.

Any application by any party to this order under the provisions of any Section of this order shall be made in open court upon notice to all of the other parties to this order, and each such party, upon such application, shall have the right and privilege of requiring the production of witnesses upon whose testimony such application is sought or opposed, and of examining and cross-examining such witnesses in accordance with the rules of the Court.

John Knight, United States District Judge.

[fol. 332] The undersigned hereby consent to the signing and entry of the foregoing order.

J. Myer Schine, Louis W. Schine, John A. May, Penney & Penney, Willard S. McKay, John Fletcher Caskey, Solicitors for the Consenting Defendants.
George L. Grobe, United States Attorney.

Thurman Arnold, Assistant Attorney General; Robert L. Wright, J. Stephen Doyle, Jr., John F. Clagett, Special Assistants to the Attorney Geenral; Albert Boggess, Special Attorney.

[fol. 333] IN UNITED STATES DISTRICT COURT

[Title omitted]

TRANSCRIPT OF PROCEEDINGS, MAY 19, 1942

Proceedings before Hon. John Knight, United States District Judge, at Buffalo, New York, May 19, 1942, at 10 A. M.

Appearances:

Robert L. Wright, Esq., and J. Stephen Doyle, Esq., and John F. Clagett, Esq., Special Assistants to the Attorney General, and Albert Boggess, Esq., Special Attorney, Department of Justice, Washington, D. C., appearing for the Plaintiff.

Willard S. McKay, Esq., and Arthur J. Homans, Esq., 630 Fifth Avenue, New York, and John F. Caskey, Esq., 100 Broadway, New York City, and Richard P. Byrne, Esq., Syracuse, New York, appearing for Defendant, Schine Chain Theaters.

Louis D. Frolich, Esq., and Max Rose, Esq., New York City, appearing for Defendant, Columbia Pictures.

* * * * * * * *

The Court: Call the case.

The Clerk: United States against Schine Theaters and others.

Mr. Wright: If the Court please, the Government would like to submit at this time for your consideration a proposed stipulation and order in this case. The exhibitor defendants in this case have consented to the immediate entry of an [fol. 334] order which compels them to give up within one year from today all of the theater interests that they have acquired since August 7, 1939 when this suit was filed. That comprises some 15 theaters.

The Court: How many did you say?

Mr. Wright: 15 theaters in 13 different towns in New York, Ohio and Kentucky. Under the terms of this order these theaters are to be first offered to the exhibitors who operated them immediately prior to their acquisition by the Schine Circuit.

The Court: Does that apply to the exhibitors personally? Assuming there were members of the family?

Mr. Wright: It applies to the exhibitor in whatever form he was then operating.

The Court: Individual or the corporation at the time of the acquisition.

Mr. Wright: As the case may be. The people from whom these interests were acquired are listed on schedules which have been attached along with the upset price, which consists of the actual investment that the Schine defendants have in these theaters. Those schedules are attached as Exhibits A and B.

As I say, under the terms of the order they are to be first offered to the exhibitors who last operated them prior to the time that Schine took them over. They have a 20 day period within which to accept or reject such offer, and in the event they do not wish to reacquire the theaters, they are then to be offered to independent exhibitors generally at the same upset price.

The Court: Independent exhibitors anywhere or in the particular city?

Mr. Wright: The only limitation that the order provides as to the definition of "independent exhibitors" is that they be not connected with any of the defendants here, or any [fol. 335] predecessor or distributor, or not affiliated with a circuit of more than 15 theaters.

The Court: Then, that would apply to independent exhibitors in any location?

Mr. Wright: That is right, in any location at all.

In addition to this divestiture provision that I have described, the order further provides during the next two years the exhibitor defendants may not acquire any theater interests during that period, unless they first obtain an order from this Court permitting them to do so. In order to obtain such an order they must petition this Court upon due notice to the Government, and affirmatively establish that such an acquisition would not be against the public interest, due regard being given to competitive considerations.

The Court: Just a moment now. You speak of these theaters being within New York, Ohio and what state?

Mr. Wright: Kentucky, and, I believe, I should have said there was one in Maryland.

The Court: Several in Virginia.

Mr. Wright: That is right, two additional states.

The Court: Kentucky, Virginia, Ohio, New York, Maryland.

Mr. Wright: That is correct, your Honor.

The Court: Very well. Proceed.

Mr. Wright: In addition to the prohibition against the acquisition of any further interests during this period that I have just described, the order also prohibits the defendants from enforcing any of the provisions of existing film licensing franchises to which they are parties, and prohibits them from making any franchises or other license agreements which cover films released during the period of more than one year while this order is in effect.

The order further provides that in licensing films during this two-year period the exhibitors may not condition the [fol. 336] licensing of films in their competitive towns where an independent exhibitor operates an opposition theater.

The Court: Say that again. What do you mean by that?

Mr. Wright: The order provides that the defendant exhibitors, Schine Circuit, in licensing films for theaters in towns where they have independent opposition, that is, where an independent exhibitor operates a theater in competition with them, Schine defendants in licensing films for their theaters in those towns may not condition such licensing upon the licensing of films in the Schine closed towns.

The Court: I suppose that would conform to the consent decree in the other case.

Mr. Wright: I think it goes further than the consent decree in the other case. One of the allegations in the complaint here, if your Honor recalls, is that the——

The Court: The combination.

Mr. Wright: Yes. In substance this prevents the Schine Circuit from combining its closed towns with these competitive situations in making film licenses.

There is also a provision for enforcement of that provision which gives an additional remedy that has not heretofore appeared in decrees to the exhibitor who may be injured by a violation of that section, although the proceeding to enforce the provision must be brought by the United States.

The order also provides that such damage as the Court may find appropriate may be awarded to the injured exhibitor in that proceeding.

In view of the substantial and immediate character of the relief which is offered by this order, the Department is willing to postpone the trial of this case for the two-year period covered by this order. As your Honor knows, the same legal

issues that are involved in this suit are now being litigated in the Crescent case at Nashville, Tennessee, and that case [fol. 337] we anticipate, of course, will be ultimately decided by the Supreme Court within this two-year period.

The Court: There has been no decision in the District Court?

Mr. Wright: There has been no decision in the District Court yet, and further action will be taken by the Department with respect to similar issues in the Paramount case in New York where the consent decree is entered, and the period expires in November, 1943, also during this two-year period.

The Government has therefore agreed, subject to your Honor's approval to a continuance of the trial date for two years conditioned upon the immediate entry of this order.

Mr. McKay: If the Court please, I have very little to add to what Mr. Wright has said.

The defendants in this case, the exhibitor defendants, have consented to the entry of this order and they are motivated very largely by consideration of the fact that under the conditions as they exist now the time of this Court, the time of Government attorneys and the time of their own attorneys and their executives should not be taken up for a period which we estimate at six months in the trial of this case.

For that reason we have made what we consider very substantial sacrifices, and for that reason we have consented, subject to your Honor's approval, to the entry of this order.

At this time I want to say something personally to your Honor. It is about two years and eight months since we first appeared before you in this case. It has been a difficult case. There have been procedural matters or construction of rules which were new, for which there was very little precedent, and I, my associates and my client appreciate the patience and consideration and sound judg- [fol. 338] ment which your Honor has exhibited in the handling of this case.

Mr. Frolich: May it please your Honor, I represent Columbia Pictures, one of the three distributing companies. We have had no part in the preparation of this order or decree. We were not consulted, and it is probably, I might say, none of our business. The Government may make any arrangement it wishes with the exhibitors.

So far as the adjournment of the case is concerned, we have no objection to having the case put over for this two-year period. I want it distinctly noted on the record that Columbia, and I may say that United Artists and Universal as well, did not participate and had no knowledge of the terms of this decree until this morning.

The Court: Is there any stipulation to be made by the Columbia?

Mr. Wright: If the Court please, the only agreement between the Government and Columbia, United and Universal is that the case may be continued two years, until 1944.

The Court: In status quo?

Mr. Frolich: That we are in status quo.

The Court: There is nothing in this stipulation——

Mr. Frolich: That binds Columbia.

The Court: Any reference to either of these defendants?

Mr. Frolich: I don't think there is. As far as I know there isn't. We do not feel that we are bound in any way by the decree, as far as being the distributor is concerned.

The Court: There is nothing in the stipulation that says anything about what you should do and cannot do.

Mr. Frolich: That is right.

The Court: I appreciate what Mr. McKay stated. The work has extended over a period of a considerable time. I have briefly gone over this proposed agreement or stipulation, and I think I understand what it includes or proposes. [fol. 339] It has been entered into by the Government and Counsel, and by all the interested parties, and unless the Court could see that it would interfere with the statutes, or significant reasons why it should not be approved, it ought to be approved, I should say.

The terms are understood by all parties. As I understand it, the matters of any failure to observe the conditions of this stipulation would be brought back to the Court, and the carrying out of the stipulation means under the jurisdiction of the Court. So, I am very glad to approve it. Certainly, as pointed out by Counsel, it has its benefits.

Of course, as far as the Court personally is concerned it is pleased to escape the arduous task of trying this case. Trial of it would entail a very large expenditure, I take it, and the devotion of a great deal of time of Counsel and by busy men.

There is another feature also that has been called to my attention by Mr. McKay, and that is that at this time, far

from ordinary, these matters where there is a reasonable chance for adjustment in the interest of permitting us to give time to other things more important, we ought to settle these things.

It is true, if these cost prices are under the present value of the properties, the defendants are giving up a substantial amount, and certainly they are undergoing substantial restrictions as to the future which, of course, I know is the object of bringing this action.

So, I am glad to approve the stipulation. Is your order here?

Mr. Wright: Yes, your Honor. The order is attached to the stipulation. It has a space for signature on the last page.

The Court: Oh, yes, I see.

Mr. Wright: I think your Honor need only sign the last page of the order.

[fol. 340] Mr. Frolich: May it please your Honor, my associate has called my attention to the fact that Columbia has a three year franchise with the exhibitor defendants which expires 1943. May I have cleared up this morning the question whether or not Columbia may go on and sell pictures under that franchise until 1943?

Mr. Wright: The decree by its terms, of course, only makes the franchise void in so far as the exhibitor defendants are concerned, and enjoins them from enforcing any of its provisions. It cannot, of course, affect any rights Mr. Frolich has under it.

Mr. Frolich: I suppose under all practical purposes the exhibitor would have no right to go on with the franchise.

The Court: You mean the Schine people?

Mr. Frolich: The Schine people. We have a franchise made two years ago which expires in 1943.

The Court: What does that franchise provide?

Mr. Frolich: I suppose it provides for the leasing of pictures to all of the theatres of the Schine Circuit for that full three-year period.

The Court: Does it specify the theaters?

Mr. Rose: Yes, sir, it does specify the theaters.

The Court: Including, I assume, these mentioned here.

Mr. Rose: No doubt, although I do not know offhand.

The Court: What position are the Schine people put in, then?

Mr. Wright: I do not see that there is any difficulty there. The principal thing about the franchises as far as the Government is concerned is upon the use of them as an excuse by the distributors to discriminate against opposition of the defendant exhibitors. If the exhibitor defendants are enjoined from enforcing the terms, that is all the Government is interested in with respect to these particular franchises.

The Court: The question here is the obligation to Schine. [fol. 341] There has been a franchise agreement with one of these companies here for exhibition in these theatres. Don't they stand to presume a possible loss by reason of that agreement?

Mr. Wright: That is something, I assume, they took into account at the time they agreed to be enjoined from enforcement of the franchise. That will be a matter to settle, I assume, with Columbia.

The Court: It is not a matter concerning you, that is true.

Mr. Frolich: It deprives us of a valuable contract without having had an opportunity to litigate it or negotiate it or have anything to say about it. This is a valuable contract to Columbia. We would like to go on and conclude the contract and carry it out, and it seems to me the interest of all parties would be served if we were permitted to carry it out and let that be an exception to the order. Otherwise, we are deprived of a very valuable right.

The Court: You still have Schine.

Mr. Frolich: If Mr. Schine is disabled from carrying it out, if he has shackled himself by the order, I suppose we would have a remedy for a breach of contract against him, which would be very distasteful, because it means more litigation, and I think there ought to be some exception with regard to the Columbia franchise, because we have had no opportunity to litigate it.

The Court: What do you say about that, Mr. McKay? I suppose that has all been considered?

Mr. Caskey: Our position is simply that this is one of the demands of the Government in Mr. Wright's exact language, and we have accepted it.

Mr. Frolich: And we are the victims.

The Court: I would not say that, because if you have a contract, you may have to go to Schine——

Mr. Frolich: It means for all practical purposes we can-
[fol. 342] not enforce the contract. I do not imagine Columbia would want to bring a suit against a man who is disabled from performance by reason of a Government decree. It means we lose the benefit of a contract without being consulted and without having tried an issue. If we went to trial in this case, that is one of the things that we could protect, our contract, and we have lost that opportunity by Mr. Schine signing this order. I think the Government in all fairness to Columbia ought to except the Columbia from the provision of that paragraph in the order. How about that, Mr. Wright?

Mr. Wright: There isn't anything to except. The order by its terms does not apply to Columbia at all. Mr. Frolich has no proper concern with it.

Mr. Frolich: It has a general sweeping provision, and if we carried it out we would be in contempt and Schine would be in contempt. It leaves the distributor rather suspended in the air.

The Court: No, I don't see in this stipulation to which you are not a party how they can write that, in view of the consent of the people that do consent. It only binds them.

Mr. Frolich: That is true, but Schine has bound himself now, and disabled himself from carrying out a franchise with Columbia, and Columbia, which has this franchise which it deems valuable, stands deprived of the use of it without a trial, without any opportunity to defend itself or to be heard. It is an anomolous situation.

The Court: Does Columbia want to go to trial?

Mr. Frolich: Columbia was ready to go to trial this morning. I do not imagine the Court is going to try a case for four or five months with one defendant. I would not ask you to do it. It would be unfair for me to ask you to do that. I would not do that, but I think, so far as Columbia is concerned, it would not hurt the Government
[fol. 343] at all to make an exception of the case of Columbia, because if they wanted to deprive Schine of the right to make franchise agreements with others, that is all right, but why should we lose our contract?

The Court: How could they fulfill this contract under this agreement? They say they will dispose of these

theaters that you have agreed to supply. It is a question of a new purchaser, I should think.

Mr. Frolich: Except in so far as the other theaters are concerned, not those agreed to part with, we have this contract.

The Court: No, the only relief that I can see is—I do not see any reason why you cannot force the issue of the trial.

Mr. Frolich: Force the issue in this case?

The Court: I assume you could, the issue raised by your pleading.

Mr. Frolich: It is putting me in a spot, your Honor. I don't like to stand here and say, "I want to try on behalf of one defendant this enormous issue of conspiracy under the Sherman Act," just to protect a franchise agreement.

The Court: You are a party to this suit, party defendant to this conspiracy. You have a right to a trial of that issue if you want it or, as suggested by this stipulation, the trial is extended for two years. You have to elect between two things. Of course, if they consent to this, it is satisfactory to the Court, but I have no means to compel them to.

Mr. Frolich: I don't suppose you have. If I said I was going to go to trial this morning I think there would be a lot of unhappy people around here, and I don't want to be in that position. It is not fair to put Columbia in that position, but on the other hand, Columbia is being deprived of its franchise agreement without any opportunity to protect that agreement, and I do not see why the Government [fol. 344] cannot except the Columbia franchise agreement from the general operation of that clause.

The Court: I suppose they could do that, but if they are unwilling to do that, it is a different situation.

Mr. Frolich: May I ask Mr. Wright if he is willing to do that. Are you willing to— it, Mr. Wright?

Mr. Wright: No, we are unwilling to make any exception as to franchises. We believe the Columbia franchise should be treated just like any other.

Mr. Frolich: Well then, I suppose Columbia is left to its rights as against Schine, whatever they are.

The Court: Yes. Very well. Is there anything else you want signed except this order now?

Mr. Wright: No, that is the only thing, your Honor. I would like to join with Mr. McKay in expressing on behalf

of the Government our appreciation of the manner in which your Honor has handled the case, and the care and attention given to it.

The Court: I appreciate your comments. Then, there is no work for the Court, so we can take a vacation. We will adjourn until tomorrow morning at 10 o'clock.

[fol. 345] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER—July 13, 1942

This matter having been duly submitted to the Court, and the Court having considered Schedules A and B annexed to the Temporary Order herein, dated and entered May 19, 1942, the Supplemental Schedule certified by Forrest E. Ferguson, C. P. A., dated May 22, 1942, and filed herein May 23, 1942, and the affidavit of Forrest E. Ferguson sworn to the 25th day of June, 1942, and the plaintiff having appeared by R. M. Hitchcock, Assistant District Attorney, and due deliberation having been had, it is

Ordered that it is the determination of this Court that the capital investment of the Schine Defendants in the Viv Theatre, Corbin, Kentucky, as provided for in Section 4 of said Temporary Order, is the sum of $11,554.91, as indicated in the Supplemental Certificate of Forrest E. Ferguson, sworn to the 25th day of June, 1942.

Dated, July 13, 1942.

(S.) John Knight, United States District Judge.

Entered July 13, 1942.

[fol. 346] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

FINAL REPORT OF SCHINE CHAIN THEATRES, INC., SCHINE CIRCUIT, INC., SCHINE THEATRICAL CO., INC., SCHINE ENTERPRISES CORPORATION, SCHINE LEXINGTON CORPORATION, CHESAPEAKE THEATRES CORPORATION, J. MEYER SCHINE, LOUIS W. SCHINE, JOHN A. MAY, DEFENDANTS, MADE IN ACCORDANCE WITH THE TEMPORARY ORDER ENTERED HEREIN MAY 19, 1942

These Defendants pursuant to the provisions of Section 4 of the Temporary Order entered in the above entitled action on May 19, 1942, hereby report to the Court as follows:

[fol. 347] Section 4 of the temporary order entered in the above entitled action on May 19, 1942, provided that the consenting defendants should file a report within thirty days after the date of said order and at the end of each thirty days thereafter, showing the efforts made to dispose of theatre interests set forth in Section 4 of said order and the names and addresses of persons to whom the theatres or the theatre interests set forth in said order had been sold during each such period. The consenting defendants have filed from the date of said order monthly the reports required by this section, setting forth the information in regard to efforts to dispose of said theatres, and also the names and addresses of persons to whom said theatres were sold.

It was further provided by Section 4 of said order:

"If at the end of one year from the date of the entry of this order the consenting defendants have been unable with due diligence to dispose of all of the above-described theatre interests, they shall file with the Court a complete report stating (1) the theatre interests disposed of; (2) the theatre interests which they have been unable to dispose of; and (3) the efforts which have been made to dispose of the same.

Such report should be filed on notice to the plaintiff, which notice shall include a copy thereof, and the Court shall thereupon grant such extension of time *or make such further order as may be just in the premises* but no order shall be made which shall require the con-

senting defendants to dispose of any theatre interest at less than the capital investment therein as set forth in said Schedules A and B."

Theatre Interests Disposed of

A. That these Defendants have disposed of the following Theatre interests in the manner hereinafter set forth:

Paramount Theatre

Glens Falls, New York

1. The Leasehold on the Paramount Theatre, Glens Falls, New York, was reacquired by the former operator, Paramount Pictures, Incorporated, on May 31, 1942. It is noted that the former owner to whom the temporary order required preference should be given was a producer-distributor-exhibitor operating at the time approximately 1210 theaters, 107 of which had been acquired since the filing of the suit against it.

[fol. 348]

Webster Theatre

Rochester, N. Y.

2. The fee of the Webster Theatre, Rochester, New York, was reacquired by a Corporation in which the former operator, Max Fogel, was given an interest on June 18, 1942. These Defendants sent a representative to Rochester, New York, for the purpose of consummating the sale of this Theatre.

Cla-Zel and Lyric Theatres

Bowling Green, Ohio

3. The leasehold of the Cla-Zel and Lyric Threatres, Bowling Green, Ohio, was reacquired by the surrender of same to the former owners and operators, Clark and Hazel Young, on June 24, 1942. The five-year Booking Contract which was in effect at the time of the leasing of these theatres by the Consenting Defendants was reinstated for a period of two years, thereby depriving the Defendants of approximately 14 months of the benefit of the contract. This was the result of a hearing held before this Court, on June 15, 1942, in connection with the reacquisition of the above mentioned theatres, at which hearing the former

owners represented that they were acquiring the theatres for their own use and profit. These Defendants sent a representative to Bowling Green at the request of Mr. Clark Young to close this transaction and an agreement was prepared in which the said Clark Young and Hazel Young represented that they had not entered into or consum-ated any sale, lease or transfer of said theatres. That, upon information and belief, the said Clark Young and Hazel Young reacquired said theatres for the express purpose of releasing the same and that they did in fact re-lease the same to Carl H. Schwyn of Cygnet, Ohio, on or before July 1, 1942, at a substantial profit to themselves. The attention of the Court is further directed to the fact that the Department of Justice had previously advised John Stump, the former owner of the Strand Theatre, Cumberland, Maryland, in response to an inquiry by him, that the privilege of reacquisition was a personal one and non-transferable.

Palace Theatre

Clifton Springs, N. Y.

4. The leasehold of the Palace Theatre, Clifton Springs, New York, was reacquired by the prior owner, Mrs. Josephine Williamson, on July 15, 1942, who released it to some one else.

[fol. 349] Scotia Theatre

Scotia, N. Y.

5. The leasehold of the Scotia Theatre, Scotia, New York, was acquired by the Edsol Corporation, a New York corporation, on December 15, 1942. The preference of the former operator, Ritz-Scotia Theatre Corporation, expired on June 9, 1942, and the said Corporation by its President, Samuel Milberg, of Albany, New York, had advised these Defendants, verbally, that he was not interested in acquiring the theatre.

B. The foregoing covers six of the sixteen theatre interests named in the decree. These defendants have been unable to dispose of any of the other ten theatre interests although they have attempted to do so with the greatest diligence. The facts with reference to each of the said ten interests are set forth as follows:

Liberty Theatre

Pikeville, Ky.

(1) Item 14 is as follows:

"The leasehold on the Liberty Theatre, Pikeville, Kentucky. The consenting defendants may retain the interest which they had in said theater immediately prior to the acquisition of said leasehold interests." These defendants state that the Liberty Theatre was included in the Temporary Order through error, that a check for $5000 was sent as a down payment to the Schines' attorney in Lexington, Kentucky, June 13, 1939, and the contract of sale was made and executed June 28, 1939. The interest was therefore not "acquired since the filing of this suit on August 7, 1939." *For the reason that the theater was therefore not properly within the order, no attempt to dispose of it should have been required and no further attempt to dispose of it should be required by the court.* However, the following efforts have been made to dispose of it.

On May 25, 1942, a registered letter was sent to G. C. Scott, the former operator. No answer was received from Scott within the time limit specified in the letter, or since.

In August, 1942, we were advised by our Kentucky representative, Mr. Lew Hensler, that he had been approached by W. J. Ward, the operator of the Weddington Theatre, Pikeville, Kentucky, in reference to the Liberty Theatre.

[fol. 350] On September 8, 1942, Mr. Lazar, who had been sent to Lexington for that purpose, among others, wired Ward that he would be glad to meet him in Lexington on that day or the next and our Glo ersville office wired Ward to the same effect. On September 9th, at 4:30 P. M., Mr. Lazar, in the presence of Mr. Hensler, received a telephone call from Ward stating that he would be unable to see Mr. Lazar, but that he would try to see him at some future date.

On September 14, 1942, a letter was received from Ward purporting to be an offer to acquire the Liberty Theatre at the price specified in the schedules annexed to the Order, but subject to deductions for depreciation, depletion, etc., and on terms to be subject to negotiations. On September 25, 1942, we advised Mr. Ward that the purchase price specified in the Order was not subject to any deductions, and he was reminded of his previous dealings with this company in 1940, when he had agreed in writing to purchase the Lib-

erty Theatre for a sum considerably in excess of the figure mentioned in the temporary Order, and he had refused to go through with the transaction, although we had sent two representatives to Pikeville to close the transaction and had drawn all of the necessary papers. Mr. Ward was further advised that an option had been granted for the purchase of this theatre.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option which subsequently expired.

It should be noted that although our interest in the lease of this theatre was acquired through the purchase of stock of the Liberty Amusement Company, the letter of May 25th was addressed to G. C. Scott, who operated the theatre, and with whom we had a buying, supervisory and booking contract. The lease which Scott had on the Liberty Theatre became involved in litigation and the landlord made a new lease with Liberty Amusement Company in which Scott had no interest. Pending a final determination of the validity of the two leases, Scott continued to operate the theatre under a bond. In order to dispose of the matter, Scott agreed to relinquish his claims. We paid $15,000.00 for the stock of the Liberty Amusement Co., which carried with it the lease for the theatre.

It should also be noted that we had an option from Scott to purchase an interest in this theatre as far back as November, 1938.

[fol. 351] Majorie Grand Theatre

Harlan, Ky.

50 per cent interest in the leasehold of the Majorie Grand Theater, Harlan, Kentucky. Appears as Item 13. The Order says, "The consenting defendants may retain the interests which they had in said theater immediately prior to the acquisition of said leasehold interest." This theater was operated under a buying, booking, and supervision contract dated November 30, 1938, which gave the consenting defendants an option to purchase a one-half interest. January 1, 1941, defendants exercised their option to purchase the one-half interest, but the management and operation of the theater was not thereby changed.

On May 25, 1942, a registered letter was sent to Leon Scott, the former owner and the present owner of one-half interest. Mr. Scott was and is unwilling that any other person should acquire the one-half interest owned by us, and he advised the Department of Justice that he did not care to reacquire the 50 per cent interest owned by us, nor did he care to have this interest acquired by anyone else but us. The Department of Justice replied to this letter advising Scott that it would be necessary for us to dispose of our one-half interest in this theater regardless of his wish in the matter.

It seemed and still seems to us unjustifiable to compel Mr. Scott to accept against his will a new partner and one he might have no confidence in, especially in view of the fact that a satisfactory and advantageous arrangement under which he operates the theater has been in effect for four and one-half years.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer who made a personal inspection of the theater with his attorney but did not care to exercise the option which subsequently expired.

Strand Theatre

Cumberland, Md.

On May 25, 1942, sent registered letter to John Stump, former operator.

On June 1, 1942, Stump advised in writing that he was not interested in reacquiring the theatre.

On September 24, 1942, this theatre was included in the option granted to Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise [fol. 352] the option, which subsequently expired.

It is believed that no one has evinced an interest in this theatre because of the high price, based on our investment.

Plaza Theatre

Malone, N. Y.

On May 25, 1942, we sent registered letter to Michael Boumansour, the owner and former operator. No answer received from Boumansour within the time limit specified in the letter, or since.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer of Rochester, New York, who made a personal inspection with his attorney, prior to the expiration of the option. The optionee advised that he was not interested in acquiring this theatre.

On December 11, 1942, a contract was made giving Edsol Corp. an option for acquisition of the theatre.

The theatre was declared unsafe and closed by order of the State Labor Department on January 8, 1943, for extensive reconstruction repairs, and the optionee was advised to that effect. After these repairs were made the optionee notified us that it did not care to exercise its option.

Memorial Theatre

Mt. Vernon, Ohio

On May 25, 1942, sent registered letter to Emerson W. Long, the former operator. No answer received from Long within the time limit provided in the letter, or since.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer, who made a personal inspection of the theatre with his attorney, prior to the expiration of the option. He advised that he was not interested in acquiring the theatre.

The Memorial Theatre lease contained an express prohibition against any transfer of the lease, and we understand that when approached by Shafer, the Board of Trustees of the Memorial Building refused to permit any transfer by the present leasee, Belpik Theatre Corporation.

Opera House Theatre

Lexington, Ky.

On May 25, 1942, sent registered letter to Southland Amusement Company, and Harry Schwartz, the owner and former operator. No answer was received within the time [fol. 353] limit provided in the letter, or since.

On September 24, 1942, this theatre was included in the option granted Sol Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option which subsequently expired.

On December 11, 1942, contract made with Edsol Corporation for acquisition of theatre subject to obtaining consent

of landlord to assignment of lease. We understand that such consent could not be obtained.

Ada Meade Theatre

Lexington, Ky.

On May 25, 1942, sent registered letter to M. Switow & Sons Enterprises, Inc., the former operators. No answer was received within the time limit provided in the letter, or since.

On September 24, 1942, this theatre was included in the option granted Sol Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option, which subsequently expired.

On December 11, 1942, contract made with Edjol Corporation for acquisition of theatre subject to obtaining consent of landlord to assignment of lease. We understand that such consent could not be obtained.

Yiv Theatre

Corbin, Ky.

On May 25, 1942, sent registered letter to M. K. Murphy, the former operator.

On May 29, 1942, received letter from Murphy questioning the figures set forth in the schedules annexed to the Order, and stating that he was ready to take over the theatre at the price paid him therefor. On June 2, 1942, we wrote Murphy calling his attention to the provisions of the order and the schedules. On June 5, 1942, received copy of a letter sent to Murphy by the Department of Justice, in response to a letter from him. Wrote Murphy on the same date, suggesting a meeting in Gloversville, New York, for the purpose of discussing the matter and possibly consummating a sale of the theatre. On June 11, 1942, received a reply from Murphy advising that he could not be in Gloversville on June 12th, but asking that a representative be sent to Corbin to turn the theatre over to him. We wired Murphy on the [fol. 354] same date that his letter was unsatisfactory, and not in compliance with the Order, and that no representative would be sent to Corbin, but that a hearing had been arranged before Judge Knight on June 15th to discuss this and other matters.

On June 15, 1942, Messrs. McKay and Schine appeared before Judge Knight. Murphy was represented by Stephen Doyle of the Department of Justice. The matter was fully presented to the Court, including the question of the amount of our investment as set forth in the schedules annexed to the order, and the Court granted Murphy an extension of time to Monday, June 22nd at 12:00 noon, provided he deposited $3,500.00 as evidence of good faith. On June 22, 1942, a cashier's check for $3,500.00 was received from Murphy at 11:00 A. M.

We understand that the money was supplied by Chas. Mitchell, of Barbourville, Ky., for whom Murphy was dealing for the theatre.

On June 26th, receipt of the check was acknowledged and Murphy was reminded of the fact that he would be expected to comply with all of the provisions of the order, and that we were prepared to send a representative to Corbin to close the transaction in accordance with such provisions. On July 3rd, letter dated June 30th received from Murphy refusing to pay the price stipulated in the schedules annexed to the Order. On July 8th, received a wire from Murphy requesting that we send a representative to Corbin to turn the theatre over to him. A reply wire was sent, stating that the matter would have to await the determination of the court as to the correct purchase price unless Murphy was willing to pay the amonut stipulated in the Order and schedules. On July 13, 1942, a further letter was received from Murphy with reference to this matter, and on the same date the Court made its ruling confirming the figures set forth in the schedules annexed to the Order. On July 15th, a copy of the Judge's order was sent to Murphy and he was advised by letter and telegram that we were prepared to send a representative to Corbin to meet him on the night of July 20th for the purpose of turning the theatre over to him, provided that he would advise us by Friday, July 17th that he was prepared to close the transaction in accordance with the directions of the court and with his agreement made in open court on June 15th. On July 17th we received a letter from Murphy advising that he was withdrawing from the deal, and asking that his check be returned. Subsequently received a wire and telephone call from Murphy renewing his request for return of his check. On July 20th Judge Knight was asked for instructions in the matter. On July 24th, pursuant to the instructions of the court, Murphy

was advised that we were returning his check. On July 29th, [fol. 355] receipt acknowledging the return of the check was received from Murphy.

On September 24, 1942, this theatre was included in the option granted to Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option which subsequently expired.

State and Appalachian Theatres

Appalachia, Virginia

On May 25, 1942, sent registered letter to M. K. Murphy, the former operator.

On May 29, 1942, received a reply from Murphy questioning the figures in the schedules annexed to the Order, and advising that he was ready to take over the theatres at the price paid him therefor. This letter was acknowledged and Murphy's attention called to the terms of the Order. After correspondence and discussion, the matter was submitted to Judge Knight, at a hearing on June 15, 1942, and Murphy was granted an extension of time to June 22nd at 12:00 noon, in which to consummate the transaction, provided he deposited the sum of $10,000.00 as evidence of good faith. The seven day extension expired, but no deposit was ever received, nor was any other effort made by Murphy to reacquire said theatres.

On September 24, 1942, this theatre was included in the option granted to Sol Shafer, who made a personal inspection of the theatre with his attorney, but did not care to exercise the option which subsequently expired.

Active negotiations were carried on with R. P. Bolling of Norton, Virginia, with reference to these theatres. Mr. Lazar was sent to Lexington, Kentucky, and a wire was sent to Mr. Bolling requesting that he meet Mr. Lazar in Lexington, Kentucky, on September 8th or 9th, to discuss the matter. On September 9th, Bolling wired Lazar that he was unable to see him in Lexington, but hoped to see him in Appalachia at some other time. Nothing further has been heard from Mr. Bolling since that time.

Other Efforts Made By These Defendants to Dispose of the Foregoing Interests

These defendants also carried on active negotiations with the independent exhibitor, above referred to, for the sale of the Memorial Theatre, Mt. Vernon; however, the lease of this theatre contained an express prohibition against any assignment or subletting and when the prospective pur-[fol. 356] chaser consulted with the owner with reference to a Consent to Assign, he was advised that such Consent would not be granted. These defendants were therefore advised that it would be impossible for the lease to be transferred.

In addition to the foregoing specific instances of active negotiations for the theatres in question, the fact that the theatres have been offered for sale has received widespread publicity, particularly in the various Motion Picture Trade Publications which circulate among those persons most likely to be interested in acquiring the theatres. The terms of the original Order of May 19, 1942, including the names of the theatres and the prices set forth in Schedules A and B, were reprinted in full in the Motion Picture Herald, The Exhibitor, The Film Daily, The Motion Picture Daily, The Hollywood Reporter, Box Office, Showmen's Trade Review, and other publications. Each month, as reports are rendered to the Department of Justice as to the progress being made in disposing of the theatres, the substance of these reports is published in the Trade Papers and mention is made of the theatres remaining undisposed of.

That the matter has come to the attention of a great many persons may be adduced from the fact that these defendants have in addition to numerous telephone calls and personal inquiries, engaged in a great deal of correspondence in connection therewith. That these defendants have exchanged an aggregate of 94 letters with Real Estate Brokers and an aggregate of 60 letters with various theatre operators, exclusive of the prior owners and operators of the theatres in question. That in each instance the person or persons addressing inquiry to these defendants was advised of the terms of the order and those expressing a further interest were furnished with additional information. That in the case of the Real Estate Brokers, particularly, these defendants insisted on a disclosure of the name of the principal before furnishing detailed information, in view of the

prohibition in the Order against a sale to a Circuit. That a number of brokers indicated that they expected to be paid a commission and upon being advised that none was payable under the terms of the Order, they displayed no further interest. That in no case did any of the persons who addressed inquiries to these defendants evidence a real interest in acquiring theatres to the extent of making a definite offer in writing, accompanied by a deposit or other evidence of good faith.

[fol. 357] The operation of motion picture theatres is a highly competitive and unusually individual type of business which requires the constant, continuous and alert attention and services of every member of an organization to enable it to function efficiently and properly not only in the best public interests but for the protection of the property rights involved; the continuous disruption of the regular, necessary, normal course of the operation of the business of this company by its executives, officers and employees by the constant, continuous repetitious endeavors to find purchasers or to negotiate and properly handle inquiries for possible purchasers and from possible purchasers has seriously interfered with and disrupted the efficient operation of these defendants' business and adversely affected their standing in the industry.

These Defendants have had a considerable part of their organization, including their legal staff and most of their executive officers, engaged in negotiations and efforts to dispose of these theatres during a large part of the time from May 1942 to date. On account of shortage in help this has interfered with the executive officers, the legal staff and other employees in carrying on in an orderly manner the business of these Defendants. They have been obliged to expend much time and money, for which they are not recompensed, in traveling expenses, legal expenses, telephone, telegraph and the use of the services of their executive officers, legal staff and other employees in attempting to dispose of the theatres set forth in Section 4 of said temporary order of May 19, 1942. The activities of the officers and employees in attempting to dispose of the theatres hereinabove-mentioned, have been highly detrimental to these defendants because they have been unable properly to carry on and supervise the business of the consenting defendants and at the same time engage in prolonged efforts to dispose of the theatres mentioned.

These Defendants are of the opinion that there are many and valid reasons why the ten theatres in their possession have not been reacquired by the former owners or acquired by some other operator. It is self-evident that there is a real lack of interest on the part of any person, firm or corporation to acquire any of these theatres as the fact that they are for sale has been widely publicised by the various means hereinabove set forth. All of these theatres represent substantial original investments on the part of these Defendants, and in view of present conditions such as high taxes, gasoline rationing, shortage of help, etc., and the further fact that any person wishing to purchase a theatre will be obliged to make a large cash outlay upon which it [fol. 358] would not appear that under present conditions substantial profit commensurate with the cost could be made, the former owners or other theatre operators are apparently unwilling to take over any of these theatres. With each month that continues each of said theatres undisposed of under the provisions of said order is deteriorating and the majority of said theatres are in a rather deplorable condition. These Defendants have no incentive nor reason to invest money in repairs and in the installation of equipment, of which they have a limited amount which cannot be replaced, in these theatres because of the fact that the condition is one of day-to-day operation if under the provisions of said order a buyer should appear, and in addition these Defendants would not be further reimbursed for the installation of equipment or repairs to said theatres. A theatre is like any other building which is constantly used and will, due to wear, tear and depreciation, in a very short time if not repaired reach a rundown and decrepit condition. When these Defendants bought the ten theatres which are presently undisposed of under the temporary order of May 19, 1942, it was the intention of these Defendants to renovate and repair said theatres, put them in first class efficient operating condition, and, to the extent that they had equipment available, to install modern and efficient equipment so that these theatres would be a paying venture and in a modern, progressive and sanitary condition which would serve the public interest of the communities in which they are located. It is respectfully submitted that it is in the public interest that these Defendants be permitted to retain these theatres, and that the provisions of Section 4 of the Temporary Order of May 19, 1942, requiring divesti-

ture of these theatres be eliminated so that these Defendants can make available, to the extent of their ability, to the public in the localities where these theatres are located, theatres which will at least be in as good operating condition as they can be put in under present conditions and times. The provisions of this order have resulted in depriving the public in these communities where these theatres are located, at least in so far as these theatres are concerned, of the benefit of theatres which are kept in first class condition and which have in them the best available equipment. If the provisions of Section 4 of the Temporary Order of May 19, 1942, are not modified so as to permit these Defendants to retain said theatres and to place them in first class operating condition, said theatres will continue to deteriorate until they reach a hopeless state of decay and the public in these communities will not be furnished with the type of theatre entertainment which could be furnished to them if these Defendants were not constantly under the threat of having to dispose of any one of said theatres from day-to-day. It is respectfully submitted that the result of [fol. 359] Section 4 of the temporary order of May 19, 1942, when analyzed shows that it was a grave injustice to these Defendants to place them in a position where they were obliged to dispose of said theatres at fixed prices, and because of this situation were and are now unable to maintain proper service and operate the theatres as they should be.

These defendants are of the opinion and belief that the lack of real interest evidenced is due in large part to the fact that the theatres in question represent substantial investments on the part of these defendants and in view of the present conditions with respect to high taxes, etc., there are few if any persons who would be willing to purchase a theatre or theatres knowing that such purchase, involving a large cash outlay, would not be likely to return a profit commensurate with the high cost. This would certainly be true of independent exhibitors and would be even more true of persons without experience in the theatre business.

As a result of the uncertainty of their position with respect to the theatres remaining undisposed of, these defendants have been reluctant to expend monies on maintenance, repairs and replacements, particularly in view of the virtual impossibility of obtaining parts and equipment at the present t-me. These defendants are, therefore, un-

willing to use any of their limited stocks of such parts and equipment for replacement purposes in theatres which they may not keep, since such equipment cannot be obtained for need use in their other at present at any price. The result is that many of these theatres have now become run down and their grosses have suffered as a result. This condition will become more pronounced if another year is permitted to lapse without making repairs and replacements.

Request That This Report Be Accepted as a Compliance With the Temporary Order

These defendants respectfully ask the Court that this report be accepted as final compliance with Section 4 of the Temporary Order and that they be not required to go any further in attempting to dispose of any of the interests covered by that order and that defendants be permitted to acquire other theatre interests in the manner hereinafter set out.

In support of this request they relie upon the facts set out above and the fact that the disposition of the remaining interests and the limitation on the right of defendants to acquire other theatres are against the public interest and [fol. 360] curtail competition which that interest demands. On this point they respectfully submit the following:

On July 20, 1938, there was filed in the District Court of the United States for the Southern District of New York, a complaint entitled, "United States of America, Petitioner, vs. Paramount Pictures, Inc., et al., Equity Number 87-273," in which Paramount Pictures, Loew's Incorporated, Irving Trust Company, Inc., Trustee and banker for Radio Keith Orpheum, Warner Brothers, Incorporated, Twentieth Century Fox Films Corporation, Columbia Pictures Corporation, United Artists Corporation, and Universal Corporation, thereinafter called the parent companies and with them groups of defendants designated as Paramount defendants, Loew's defendants, R. K. O. defendants, Twentieth Century Fox defendants, Columbia defendants, Universal defendants, and United Artist defendants. After enumerating the defendants and charging that the first five groups were engaged in producing pictures for the screen, distributing them and exhibiting them in their theaters and that the

remaining three groups were engaged in producing and distributing such pictures, it set out an alleged history of the industry.

The complaint then charged that the Paramount Group operated 40 Metropolitan De-Luxe Theaters in 14 metropolitan areas, 1093 theaters in other areas, that Loew's operated 20 Metropolitan De-Luxe Theaters in 15 metropolitan areas, that R. K. O. operated 19 Metropolitan De-Luxe Theaters and 105 other theaters, that Warner Brothers operated 20 Metropolitan De-Luxe Theaters and 507 other theaters, that the Twentieth Century Fox Film Group operated 19 Metropolitan De-Luxe Theaters and 499 other theaters.

It charged that the defendants violated the provisions of the Sherman Anti-Trust Act by entering into a combination for the monopoly of exhibition in first run metropolitan and other theaters and a monopoly of production and imposed on unaffiliated exhibitors harsh, onerous, and unfair trade practices, each of which tended to restrain and did restrain interstate commerce. It alleged numerous instances of the same. It alleged and asked that the defendants be restrained from building, buying, leasing, or otherwise acquiring any additional theaters or any further interests in theaters, directly or indirectly, and each of them be required to divest themselves of all interest or interests in theaters and theater holdings and they be enjoined from acquiring directly or indirectly any other interests in the exhibition of motion pictures, and to divest themselves of all interest direct or indirect.

[fol. 361] The complaint describes an affiliated theater as one owned, controlled, or managed by a major producer or distributor or one in which a producer or distributor has a financial interest. It charges that in 1937 the affiliated theaters numbered 2397, constituted 13 per cent of the whole number of theaters and furnished 25 per cent of the total seating capacity; that the unaffiliated theaters numbered 3910, constituted 21 per cent of the total number and furnished 26 per cent of the total seating capacity; that the independent theaters numbered 12,211, constituted 61 per cent of the whole number of theaters and furnished 49 per cent of the total seating capacity. On November 14, 1940, two years and four months after the filing of the original complaint, plaintiff filed an amended and supplemental com-

plaint in the Paramount Case, in which it appeared that notwithstanding the prayer of the complaint that the defendants be enjoined from acquiring further theaters or theater interests, the number of the First Run Metropolitan Theaters then operated by Paramount was 63 in 18 cities, while the original complaint showed 40 theaters in 14 cities an increase of over 50 per cent. That the other theaters operated by Paramount were approximately 1210, while at the time the original complaint was filed the number was 1093, an increase of 107.

Also according to the allegations in the original and amended complaints it appears that at the time of the filing of the original complaint, Loew's had 20 Metropolitan First Run Theatres, but at the time of the filing of the amended complaint it had 24; that The Twentieth Century Fox Film Corporation had 19 Metropolitan De-Luxe Theatres at the time the original complaint was filed and 30 at the time the amended complaint was filed. It had 499 other theaters at the time the original complaint was filed and 508 when the amended complaint was filed. Warner Brothers had 20 Metropolitan De-Luxe Theaters when the original complaint was filed and 35 when the amended complaint was filed. It had 507 other theaters when the original complaint was filed and 522 when the amended complaint was filed. R. K. O. had 19 Metropolitan First Run Theaters when the original complaint was filed and 29 when the amended complaint was filed.

On the date of the filing of the amended and supplemental complaint in the Paramount Case, November 20, 1940, a consent decree was entered therein to which plaintiff and the five producer defendants were consenting parties and, notwithstanding the fact that the five consenting defendants had increased their theater holdings as above stated, none of them was required to dispose of any theater or of any [fol. 362] theater interest acquired since the filing of the original complaint although that complaint asked that the acquisition of such interests be enjoined and set forth the Government's reasons for contending that the acquisition and holding of theaters and theater interests by producer distributors created a monopoly and was against public interest. The decree not only permitted the five distributor producer exhibitor defendants to retain all the theater interests which they had acquired prior to the filing of the

original complaint and subsequent thereto, but in addition, specifically provided:

> *"Nothing herein shall prevent any such defendant from acquiring theaters or theater interests to protect its investment or its competitive portion, or for ordinary purposes of its business."*

The attention of the Court is called to the fact that four of the five consenting Paramount defendants compete, as exhibitors, with the defendants on whose behalf this report is made.

It is respectfully suggested that in view of the circumstances outlined above, it was an outrageous act of oppression for the Government to require these defendants, having only 150 theatre interests, to attempt to sell the 15 theater interests which they had acquired since the filing of the complaint against them, while it permitted the producer-distributor-exhibitor defendants who were also defendants in this case to retain the 63 Metropolitan First Run Theaters and 141 other theaters acquired after the filing of the complaint.

Order Here Asked Is Within the Terms of the Temporary Order

In this regard, these defendants are not asking for a rescinding of the Temporary Order entered in this case May 19, 1942, but that in view of the facts hereinbefore set out, the Court under the provision of the order that it shall *"make such further order as may be just in the premises"*, shall as a matter of equity, right, and fairness, enter an order that the defendants be not required to make any further effort to dispose of the ten theater interests (one of which was acquired prior to the filing of the original complaint) and for the purpose of placing these defendants on a plane of equality with the five Paramount defendant-producer-distributor-exhibitors, four of whom are their competitors, the Court include in its order a provision that nothing in the order heretofore entered *"shall prevent any such defendant from acquiring theaters or interests therein to protect its investment or competitive position or for ordinary purposes of its business."*

[fol. 363] As further grounds for this request, it is respectfully pointed out as above indicated that so far as it concerns the matter of disposing of theater interests acquired since the filing of the original complaint herein, the order asked is not for a recision or modification of the provisions of the temporary order but is for an order in strict accord with the terms thereof. The temporary order as noted, provided that the Court "make such further order as may be just in the premises" and thereby, the plaintiff *as a consenting party left the question of what order should be entered upon the making of the final report to the discretion of the court*—a discretion which must necessarily be exercised in view of the facts and circumstances of the case. That this was the effect of the order could not have been unknown to plaintiff's counsel since the court in denying the plaintiff's motion for an injunction definitely gave that meaning to the words such order "as may be just in the premises." The court in its opinion, with reference to these words, *"just in the premises" properly said that this presumes the right in the court to exercise some discretion.* Obviously, it is not only the right of the court but its duty so to do.

We respectfully point out that the plaintiff could not have permitted the Paramount producer-distributor-exhibitor-defendants to retain the theater interest which they had, contrary to the prayer of this complaint, acquired since this complaint was filed *if such retention were a factor in the suppression of competition. This is emphasized by the fact that at the same time the order consented to by the plaintiff permitted those defendants to acquire other theatres without asking leave of court.*

The Situation as Disclosed by the Plaintiff on the Presentation of the Consent Decree

The fact that by the terms of the Consent Decree all the matters of which the plaintiff complained both in the Paramount Case and in this eliminated case were remedied is shown by the statement made by plaintiff's counsel in presenting the Decree to the court, which was as follows:

Mr. Hayes: If your Honor please, at this point I desire to hand to your Honor the signed proposed consent decree, the exchange of letters relating thereto between Donovan, Leisure, Newton & Lumbard and the Department of

justice, the rules of the Arbitration and Appeals referred to in the decree, and the map of the Arbitration Tribunal referred to in the rules, and, if your Honor is agreeable, the government would desire to be heard on the proposed decree at this point.

[fol. 364] The Court: Very well, Mr. Hayes.

Mr. Hayes: Thank you, your Honor.

As your Honor knows, the trial of this action began early in June. On the Thursday night of the first week of trial, immediately after the conclusion of the opening statements, conferences were initiated looking toward a possible settlement of the suit by consent decree.

The first meeting of the various conferees for the purpose of attempting to work out a consent decree solution was held on June 12th. That is just five months and two days ago. The whole intervening period has been spent by the various parties endeavoring to arrive at the document which is now before your Honor.

Originally all eight of the defendants participated in the conferences. After about a month or a month and a half, the three non-theatre ow-ing defendants who are not parties to the decree withdrew from the conferences, which however continued until the agreement finally was reduced to writing. The proposed consent decree affects the five defendants who own theaters. The approach on the part of all—on the part of the defendants filing the consent and on the part of the government, was an endeavor to meet through the terms of the decree a solution of the alleged evils and the alleged abuses in the motion picture industry, without resorting to the very drastic remedy of divorcement. That was arrived at rather early in the sessions.

These defendants own, among themselves, about 2400 theatres or have interests in about that many. If the government were successful in its suit and if the Court should order divorcement of the exhibition from the production and distribution branches of the industry, there would necessarily ensue a very long period of time during which those 2400 theatres or the interests therein would be thrown upon the market. Obviously, it was not a desirable solution from the angle of the defendants and the government was willing to attempt to arrive at a solution of the alleged evils without seeking that drastic remedy. That is the basic principle which guided all of our discussions. The decree, as presented to your Honor, contains a provision, Section 21, that

during a period of three years, while the decree in all its provisions is in operation, the government will not seek divorcement by any means of exhibition from production and distribution, nor will it seek the dissolution of the existing theatre chains from the five consenting defendants. There is a three-year truce, as it were, which was arrived at between the defendants and the government.

Now as to the terms of the decree, I might say by way of preface that the *problems of the motion picture industry are not identical to the problems of all other industries.* They are peculiar, peculiar to the industry and its nature, and during the five months of negotiations every problem relating to the distribution of pictures was examined by the conferees in all its ramifications.

[fol. 365] Human work is never perfect, and I dare say this decree is not perfect. Only the next three years or more will prove how well it will work. But I can say this much: that an honest endeavor has been made by those participating in the conferences to work out a method of business through prohibitions and a system of arbitration which should work and which should relieve a great many if not all of the complaints that are made against the existing operations of the industry.

Section 3 of the decree provides for what its called trade showing. That is on page 3, your Honor.

The evil that that section was aimed to correct is an evil called blind selling. The complaint is made that presently under the existing method of distribution of pictures exhibitors do not know what they are buying. Distributor representatives circulate among the exhibitor customers beginning some time in the spring of the year and continuing until they are all under contract endeavoring to get all exhibitors to contract with them for their whole seasons's product. Actually, at the time those contracts are made very many of the pictures covered by them are not even in production, and the exhibitor claims that as a result he is buying sight unseen. He might contract for two Mickey Rooneys, but he doesn't know what the pictures are going to be like. He buys on the reputation of the distributors, based on their past production and on the names of the stars that are expected to appear in the particular pictures.

But not only have exhibitors complained about so-called blind selling; so have public groups, public groups who are

interested in moral movies for their children. And the Department has received these complaints, both from the exhibitors and from the public groups.

The complaint of the public groups specifically is that a local exhibitor under the method of selling presently followed has no opportunity to decide what picture best fits the local needs of his community because he contracts for a picture before he knows what the picture is going to be like.

Section 3 which is effective September 1, 1941,—which means the beginning of the next motion picture season—the season running from September 1st of one year to August 31st of the next year, and the current season having been largely contracted for already,—Section 3 provides that before any picture can be sold—any feature—after September 1, 1941, it must be trade-shown. That means that there must be an exhibition of that picture in every one of the exchange districts maintained by each of the defendants at which the trade is free to attend. There is no obligation whatsoever placed on exhibitors to attend those trade showings, but merely the obligation is placed on the distributor not to sell the feature until it has been trade-shown. Thus an exhibitor if he desires to see the picture may do so and decide whether or not he wants to contract for the [fol. 366] licensing of that picture. It further provides that notice of trade showings shall appear in trade papers having general circulation in the industry so that exhibitors will know when the showings of the various features will take place.

As a matter of fact, I don't believe that every exhibitor in the country is going to spend his time doing nothing but attending trade showings. Exhibitors will also be free to attend and very likely many of the local exhibitors close to the exchange center will attend. But whether they attend or not they will have the benefit of the criticisms in the trade papers. They will have the benefit that they will now get and they do now get in so far as it can assist them from first-run exhibition and the criticism in the newspapers of those exhibitions. They will know what the picture is about. They will know the character of the picture. They will know its entertainment value. And they will thus be guided in their contracts subsequently on those pictures when those pictures are offered to them subsequently for license.

Section IV (a) of the decree is a very interesting provision. It was not arrived at except after long weeks of argument. It provides that the pictures shall be sold to groups of not more than five pictures, all of which, of course, must be trade-shown. It provides further that the sale of one group of features may not be conditioned by the distributor on the sale of another feature or group of features. That section is designed to meet the complaints leveled against the practice called block booking. As I mentioned to your Honor, at the present time an attempt is made by every distributor to book up an exhibitor for a season's contract. That system has been known in the industry for years as seasonal block booking. It has been condemned and fought against both by exhibitor groups and by public groups, and their criticisms have been brought to the attention of the Department of Justice. This proposed Section IV (a) is an attempt to meet those criticisms.

Now, with what were we faced? If we looked at the ideal of competition—free and open competition—I suppose we would have to conclude that the only way to accomplish the ideal would be if every theatre in the United States were individually owned, nobody owning more than one, and if every picture produced were individually sold. But I fear that this is an ideal which does not exist and cannot exist outside of economic story books. In practice it just does not work, does not work in the least. In practice people will own more than one theatre and people will sell more than two units of their product at the same time or more than one unit.

Accordingly, the ideal being impossible, the endeavor of the government in this section was to reduce the number of the pictures that could be sold at one time to the smallest number consistent with the ability of the distributors to distribute their pictures without outrageous expense being incurred by them. It was perfectly obvious that single selling would so increase the cost that the public would suffer rather than anybody else because of the tremendous cost of distribution. It is believed that, without very sub- [fol. 367] stantial increase of cost, the distributors will be able to sell in groups of five pictures. Now it is perfectly obvious that this section goes a long way toward attacking the practice of block booking—that is, the two sections

taken together. I mean, first, the trade showing, and, second, sales of not more than five pictures at a time.

Now, on the other hand I want to point this out: there is no prohibition here against selling more than five pictures at a time. A distributor could sell 30 pictures at a time to an exhibitor, if they have them ready for sale. The only obligation, the only restriction, is that the distributors may not condition the sale of one group on the sale of another group. They are perfectly free to sell as many pictures to an exhibitor as he is willing to buy at the time they are engaged in their bargaining. Perfectly free.

Secondly, these groups are not frozen groups; that is, a distributor may be offering a group of five pictures in one territory, and in a different territory, a totally different group and so on and so forth. He may change the groups and rearrange them from time to time. The reason for that is twofold: it helps both the distributors and the exhibitors. It helps the exhibitors in that when a particular group is offered to an exhibitor and he does not like one, two or three of the pictures, he can exercise by his bargaining the right to attempt to get the distributor to agree with him to change that group. They are reduced then to their bargaining positions, the two of them, as to whether or not they can agree on the contents of the group. If the blocks were frozen an exhibitor could not so bargain with the distributor.

On the other hand that provision is also in the distributor's favor. If the blocks were frozen and a distributor offered a block which he found was a financial loss to him because it just was not selling, he would not be able to rearrange the block, to sweeten it up, to borrow an expression from the industry. This way he can. He can make his blocks as attractive or as unattractive as he in his best judgment decides. There is perfect freedom there on the contents of the blocks. There is perfect freedom on the number of pictures that can be sold at one time. The restrictions are merely that no group shall have more than five pictures and that the sale of one group shall not be conditioned upon the sale of another group.

The effect of the operation of this section we believe will be this: At the present time once an exhibitor has contracted for the season's product of three, four or five companies, depending upon the number of screenings he has a year, his screen time is closed. He is not in the

market for the product of other companies. His screen time is closed not merely for a week or two weeks, but for the season—the whole motion picture year. Under the method of sales of blocks of five the exhibitor is always in the market. The distributor is always trying to sell. The exhibitor not having filled up his screen time with blocks for the whole season, has open screen time some [fol. 368] time in the future which he can devote to the products of companies other than those from whom he used to buy his whole season's blocks. There are all told ten distributors in the industry. Ten national distributors. At the present time if he buys the product of four, let us assume, he is out of the market for all practical purposes as to the product of the other six. Under the method of sales in blocks of not more than five without conditioning he can, if he wants, contract with the same four companies and only those four. That is entirely up to him. But if a particular one of those companies puts out a series of groups of pictures that he does not like he is no longer under contract obligation with the other distributors for their product on whatever terms he by bargaining can arrive at.

We feel, therefore, that this provision will definitely open screen time of the exhibitors. Opening screen time will stimulate competition among the distributors. Now those distributors who are excluded from the screens of particular theatres by those theatres blocking on a season basis, can compete constantly throughout the years for sales to those exhibitors. Further it will open the market, we believe, for independent producers who are virtually precluded under the present system from obtaining screen time because of the method of season Block Booking. Lastly, it will afford the exhibitors greater opportunity of choice which now they lack because of the operation of season Block Booking.

Accordingly, we feel that Section 3 and 4A go a long ways forward, not only towards meeting these specific complaints that have been made, but also towards stimulating genuine competition in the industry.

In connection with those sections there should be mentioned Section 12 of the decree which appears on pages 20 to 24. Sections 3 and 4A set up a new method of distribution and licensing. The five consenting defendants, if the decree becomes effective, will be the only distributors in the motion picture industry that will be found to follow

that method of selling. Their competitors will be free to continue to do business on a season block booking basis, since they will not be parties to the decree. Accordingly these defendants felt, and there is merit in their contention, that they should not be forever bound to this method of selling in the event their competitors would never be bound to sell in the same fashion; that they were perfectly willing to try it for one year, one whole motion picture season, but that in the event that, by the end of that year their competitors had not been obligated, or were not obligated, to sell in the same fashion, they would be free to go back to the method of selling followed by their competitors. We believe that is a perfectly reasonable provision.

Accordingly, Section 12 provides that if by June 1st of 1942, in the action which will still be pending against the three non-theatre owning companies, the government does not get a decree against those companies providing for this or a similar method of sale and trade showing, that they will be relieved of the operation of Sections 3 and 4A; that is, the consenting defendants will be relieved. If, how- [fol. 369] ever, the government by that time does get a decree against the three non-theatre owning companies, then these consenting defendants will have an election: They can either continue under the methods set forth in this decree or be bound by whatever provisions appear in the decree against the three non-theatre-owning defendants. In either event, the escape, as it has been called, is effective as of features to be licensed after August 31, 1942. So there will be the benefit of a full year's trial.

Section XII further provides that if at any time Congress should pass legislation covering the subjects covered by Sections III and IV (a), that those sections, of course, will be superseded by the congressional edict.

It further provides that if after September 1st, 1943, more than 12½ per cent of the revenue from distribution of pictures is enjoyed by companies not bound to this method of selling, then the parties consenting shall be relieved, and then there is a further general provision that if they can show to the satisfaction of the Court that they have been damaged and adversely affected as a result of following this method of sale in competition with companies who do not follow it, then, too, they may be relieved from the operations of those sections.

Section IV(b) on page 4 of the decree prohibits what has been called "forcing" in the industry. Forcing, according to the complaints, is the practice of a distributor when he contracts with an exhibitor for the license of features to insist that the exhibitor at the same time contract for newsreels, trailers, short subjects, westerns, foreigns and so on. Section IV(a) prohibits that practice. There could be no better way of doing away with the practice than an absolute prohibition, which is precisely what is present in Section IV(b).

Now, for remedies. Whenever any exhibitor claims that he has been forced to take more than five pictures in a group or forced to take more than one group conditioning one group on another, or has been forced to take newsreels, shorts, and so on, as a condition for getting features, the decree provides for arbitration of his claim before an impartial arbitrator, and if the arbitrator finds that the exhibitor's contention is true, then he can cancel the contract in so far as it relates to the product that was forced upon the exhibitor. There we have an effective remedy for any forcing that may take place. But it goes further than that. An exhibitor might claim, not that he has been forced to take, because he has not contracted; he might claim that distributor A came to him and attempted to force,—attempted conditioning the sale of one group of pictures on the sale of another picture, but no contract might have resulted from the attempt. The attempt might have been made. The exhibitor, in such a situation, may still go to arbitration, and since there is no contract there, the power of the arbitrator there is to impose a penalty on the offending distributor in the amount not to exceed $500.

As to the method of arbitration proposed, which is set up, I think it would be better to go through the other [fol. 370] terms of the decree before saying anything on that at this time, since that is covered toward the end of the decree.

Section V of the decree on page 6 provides for licensing all exchange districts and the purpose of that section is to cut down, in part at least, the great purchasing power of chains of theatres—large chains, chains which carry over beyond the geographical limits of a single exchange district. This section provides that features must be licensed by

exchange districts. It is not claimed at all that this is the panacea for the exercise of purchasing power by chains. It is merely one approach to cutting down, in part, of that power, and the remedy for selling or licensing features to more than one exchange district is arbitration, and the arbitrator in such a case may impose a penalty on the offending distributor, in an amount not to exceed $500.

Section VI of the decree is aimed to meet the complaints of those exhibitors who say that they cannot get pictures at all on any run, no matter how far back they are willing to take the run. An illustration of that type of complaint would be this: In a particular town there might be two theatres. Exhibitor A owns one and Exhibitor B owns another. Exhibitor B claims that he can never get pictures that Exhibitor A gets, even if he is willing to wait a week or a month after Exhibitor A has exhibited them. The distributors' explanation is that it would be uneconomical for them to license both theatres to exhibit a particular picture. That they would lose money. The amount they would get from the two theatres in the event everybody in town knew that the picture was going to play at both theatres is unequal to the amount they would get at the one theatre, if one theatre had the exclusive run. It is not the easiest problem in the world to solve that situation by any means. There is danger of giving Exhibitor A there a bit of a monopoly in the particular territory. On the other hand, there is no reason why a distributor should, at his own expense and at a loss to himself, if both exhibitors can exhibit the same feature. It was to meet that problem, of an attempt to give the subsequent exhibitor or other exhibitor the right to exhibit without in any way injuring financially the distributor, that Section VI was devised. It provides that distributors shall license pictures on a run designated by them and on terms designated by them provided the terms are not calculated to defeat the purpose of the section itself, to every reputable and responsible exhibitor, unless the granting of such a run would reduce the distributor's total revenue in the area. The practical operation of the section would be this: The exhibitor who claims that he is not getting the run, but feels that he should, under this section, could go to an arbitrator and ask to get a run. The distributor would come in and say it would reduce our revenue and the burden is on him to show the arbitrator that it would reduce his revenue. The arbitrator has both sides

of the story. If he believes that the distributor is right, he will deny the run,—that is, if he believes it will reduce his revenue. If he believes that it will not reduce his revenue, then he will grant the run. A further safeguard is provided for. After a run has been granted and a distributor [fol. 371] finds that his revenue has, in effect, been reduced, he may resort to arbitration, then the prior award is set aside and thus the original status quo would be restored.

Section VII of the decree on page 9 deals with offensive pictures, that is, pictures which are locally offensive in the locality, in which the exhibitor's theatre is located, on moral, racial or religious grounds. It provides that, after the exhibitor has engaged or has offered to license the pictures for his theatre, and within ten days after he has received notice—written notice of the approval of his application, he may reject a picture on the ground that it is offensive locally for religious, racial or moral reasons and state his reasons in his notice to this distributor. If the distributor does nothing, the contract is cancelled as to that picture immediately, but the distributor may arbitrate the question and then it is up to the arbitrator to state whether or not the picture is locally offensive. If the arbitrators find that it is, the contract is cancelled to the extent of the picture, and if they find it is not, then the contract stands.

Section VIII on pages 10 to 12 is addressed to a practice in the industry which has been the cause of tremendous controversy, to wit, clearance. Clearance is the amount of time, that, pursuant to contract, must elapse between subsequent showings of the same picture. For example, to reduce it to very simple terms, a picture is first shown in a particular town in one theatre, which is the first-run theatre.

The Court: Mr. Hayes, so far as the Court is concerned, you need not tell me what clearance is because I have carefully studied that situation.

Mr. Hayes: That is splendid. Then I can go right on and I am very glad your Honor advised me so to do, because I may have some little difficulty in explaining it myself.

All clearance claims are arbitrable under Section VIII, with one exception to which I shall refer later. The arbitrator shall consider certain factors set forth in the section. Without attempting to review them in detail, suffice it to say, the fact is the decree charges them with considering every business factor that could possibly be said to have relevancy to the question of what clearance should be allowed. Every-

thing is in there. The arbitrator's duty is to determine whether or not the existing clearance is unreasonable. If he finds it is unreasonable—rather let me say if he finds it is not unreasonable first, he leaves the situation undisturbed. If he finds that is unreasonable—I don't think I am very reasonable myself at the moment—if he should find it unreasonable, his duty then is to fix the maximum clearance which can be allowed in that situation. His award does not affect existing contracts. It becomes effective as to contracts made by the distributor after the expiration of existing contracts in a particular situation. One of the difficulties that is necessarily met with here, and in every other section for that matter, is the existence of long-term franchises.

[fol. 372] A long-term franchise is one which has more than a particular motion picture season to run. These franchises presently existing between these defendants and third parties who are not parties to this action obviously cannot be made subject to the terms of any consent decree entered in this action. We cannot disturb the existing contractual rights of third persons. However, these defendants have agreed in the "clearance" section that so far as franchises between themselves are concerned, that is between one of them, say Fox, as a distributor, and R-K-O or K.A.O. as exhibitors such franchises are subjected to the terms of the clearance arbitration, and clearance provided for in those franchises may be adjusted by arbitration under the method set up in Section VIII.

After an arbitrator has fixed the maximum clearance, any person affected by his award may subsequently seek a redetermination on the ground that conditions have changed, and that the clearance should be different from that fixed in his award. In short, it is a very elastic system that has been set up here to take care of clearance complaints.

And I might say in that connection that it has long been felt, both by exhibitors and by distributors, that there is no fairer way to handle and dispose of complaints concerning clearance than to have the clearance fixed by some impartial arbitrator, and that is precisely what is accomplished by Section VIII.

Section IX on page 12 has to do with what we call "print discrimination." A complaint would be of this nature: Let us assume that in a town there are 20 theatres entitled to

second-run. But in the exchange there are only six prints. Obviously, the 20 cannot get the six at the same time. There has got to be necessarily some discrimination. Now in many situations the exchange manager tries to keep everybody happy by rotating the preference. We do get complaints and have received numerous complaints, to the effect that in particular situations one exhibitor always gets the preference to the damage of the other fellow, the complainant, and Section IX is named to meet that complaint.

It provides that any exhibitor making such a claim may arbitrate his claim, and if the arbitrator finds that the distributor has pursued a policy of discrimination in favor of one exhibitor as against another, in order to give the former a prior playing date, he shall order the discontinuance of such policy by the distributor.

Section X, pages 13 to 18, is another attempt made by the decree to meet the purchasing power of large clains of theatres. A situation typical of what I have in mind would be one like this: Jones for years has had a theatre in a particular town; it is the only theatre he owns. He has competing against him a chain of 50 theatres, let us say. Jones for years has been getting the product of distributor A. The chain now goes to distributor A and says, "If you want us to take any of your product in any of our 50 theatres, you have to take the product away from Jones." The distributor is faced with a rather tough business decision. He either gets the revenue from Jones alone or the rev- [fol. 373] enue from 50 theatres. That is reduced to its irreducible simplicity almost.

The section is aimed to meet complaints of that character where a chain of theatres is favored as against a small independent exhibitor in the distribution of motion pictures on the same run.

We have defined in this section, and for the purposes of this section an independent as one who owns and buys for, or has a common agreement with, not more than five theatres; and as a circuit one which consists of or buys for more than 15 theatres.

The section is limited to existing theatres. An independent who comes along after this decree is signed and builds and operates a a theatre will not be entitled to the benefits of this section, and the reason for that is one that ordinary

business prudence dictates. If that provision were not in it is feared by all that this section would be an open invitation to real estate speculators to go ahead and buy theatres and say then to the distributors, "We have the best and the newest theatres in town. We are entitled to a run under this section." Many sections are obviously overbuilt right now. However, it does apply to replacements of existing theatres. If an independent has a theatre today and replaces because of a growing community with another theatre, he does get the benefit of this section, provided his seating capacity is not more than 25 per cent than the existing theatre.

When an independent claims that he is being denied product on a run being given to a circuit theatre unfairly, that he should get the run; that the only reason the circuit theatre is getting it is that it is a circuit theatre, whereas he is just an independent competing against it, he may bring his claim to arbitration. The factors the arbitrators are to consider are set forth in the decree and here, as in the clearance section, it is not necessary to review those factors. Again it is sufficient to say that all relevant business factors are those which the arbitrator must consider. If the arbitrator finds that there has been such favoritism shown to the circuit theatre, that the circuit theatre has been given the run because it is a circuit theatre, then he may order that from that time, from the date of his award forward, after the expiration of existing contracts, all contracts with both the competing independent theatre and the circuit theatre shall be made with them alone without consideration being given to whatever other theatres might be owned by the two owners. What, in effect, is brought about is a pro tanto divorcement of the circuit theatre from the circuit to which it belongs, and the independent theatre from whatever other theatres, two or three or four, that the independent exhibitor might own, and it leaves the two theatres as competing entities in the particular locality.

It was felt that was the fairest award which could be made. It would restore competition between the theatres on their merits where the arbitrator has found, after considering all the business factors, the only reason the distributor sold the circuit theatre was that it was a circuit theatre and not for some other good and sufficient business reason.

[fol. 374] The section further carries a penalty provision, as it were. It provides that if after an award has been made by an arbitrator, a distributor continues to sell the

circuit theatre or, in other words, declines or fails in good faith to comply with the award of the arbitrator, that the exhibitor thereby affected may seek, by arbitration and award, compensatory damages resulting from the distributor's failure to abide in good faith by the award.

Section XI on page 18 is what the conferees have come to call a "standstill" provision. It is an endeavor to preserve the status quo of those five companies in so far as their theatre holdings are concerned during the three-year period during which the government will not seek divorcement or dissolution of the chains.

Here again, the ideal would be that those companies would not take on or give up anything by way of theatre holdings. That is an ideal that is utterly impractical. They just cannot live that way. So Section XI provides that during the three-year period following the entry of this decree, these defendants will report to the department monthly all changes in their theatre positions; all new leases, cancellation of old leases, every change in their theatre position and the reasons for such change.

Further, they engage, each of them individually, that they will not enter upon a general program of theatre expansion, but that they may acquire theatres or interests in theatres, to protect their existing investments or their competitive position, or for ordinary purposes of business. And jurisdiction is reserved in the court to order a divestiture of any interest acquired by a defendant in violation of the section.

Now the section may never come into play. I think we all hope it will never have to come into play; but the purpose of the section is an attempt to preserve, in so far as can be done, consistent with the freedom to which these defendants are entitled in the operation of their business, the present existing theatre situation of each of them during the three-year period.

Section XV deals with the long-term franchises that I mentioned in connection with clearance. It provides that long-term franchises entered into by these defendants after June 5, 1940, are subject to the terms of the decree. That is the effect of the provision. June 5, 1940 was the day, or June 6th—I have forgotten which—the day on which the negotiations began, and the purpose of the section is to bring under the terms of the decree all franchises entered

into after the negotiations between the defendants and the government were instituted.

There is one exception and that is covered by the exchange of letters to which I referred when I handed the papers to your Honor, and which letters are now with your Honor to be filed, and that has to do with a franchise covering Fox product for K. A. O. theatres in metropolitan New York. That franchise was not actually signed until after June 6, 1940, but the consideration therefor had been passed and [fol. 375] delivered prior to, and in fact some time in January or February, of this year, long before these negotiations were instituted. A full statement of facts concerning that franchise was submitted to the government and examined and the government believes that in all fairness that franchise was one which should be deemed to be entered into prior to June 6, 1940, and accordingly gets the protection to which other franchises so entered into are entitled.

Section XVI on page 26 is an interesting section in the consent decree. It provides that no officer, employee and so on of any consenting defendant or no defendant shall be held to have disobeyed the provisions of the decree in any situation where arbitration is provided for unless such person has failed to comply with the award in arbitration. The effect of it is that there can be no contempt proceeding except for a failure to abide by an award. The reason for it is rather obvious and that is that if a particular prohibition or restriction set up in the decree is not obeyed and arbitration is provided for it, there is no need of having arbitration proceedings going on against the distributor in one tribunal while there is a contempt proceeding going on against the distributor in another tribunal. It provides for the arbitration of disputes, and only when a distributor has failed to comply with the award where an arbitration is provided for can it or its employees be held in contempt.

Section XVII exempts from the operations of the decree all dealings by a distributor defendant with its own theatre or affiliates; that is, Paramount, for example, may make any agreement it chooses with its own theatres, and Loew's may make any agreement it chooses with its own theatres, and such agreements are exempted from the operations of the decree.

And now a word on the arbitration which is provided in Section XXII, pages 30 to 35 of the decree.

The decree provides that the arbitration system set up by its terms shall be for the arbitration of all disputes for which a provision of arbitration is made in the decree itself and also for the arbitration of any disputes provided in any decree which may be entered in Chicago as an amendment to the existing consent decree against Paramount Pictures, Balaban & Katz, and others, and the arbitration of any disputes that may be provided for in any supplemental decree entered in Los Angeles in the Fox West Coast case, and it provides further that the arbitration system may be used for the arbitration of other matters not covered specifically by the decree but which are voluntarily submitted by outsiders and a distributor defendant who is a party thereto. It provides further that the American Arbitration Association shall be appointed administrator of the arbitration system.

The arbitration system is to be nationwide. An arbitration tribunal shall be established in every city where three or more of the defendants presently maintain exchanges. [fol. 376] In each of those tribunals there will be a panel of impartial arbitrators. That panel shall be made up absolutely of people who have no reason—whose experience is such and whose prior connections are such as to lead to the beiief that they will be impartial. All persons now or in the past connected with any branch of the motion picture industry are excluded from membership on such tribunals. All arbitrations shall be held in the first instance before such local tribunals, but appeals may be taken to an appeal board of three members. Those three members by the terms of the decree are to be appointed by your Honor. They are to be persons of know impartiality and distinction, and we have every confidence that your Honor will do precisely what the decree says there.

The expenses of the arbitration system are to be paid by the consenting distributors. Each will pay its pro rata share based on that proportion which its revenue from licenses bears to the total revenue from licenses of the five consenting defendants. Each year's budget is to be fixed by a budget committee. The budget committee is to be made up of one appointeee of the American Arbitration Association, one appointee of the distributor defendants, and the third is to be the chairman of the Appeal Board. The budget for the first year is fixed in the decree itself at a figure not to exceed $490,000. For each subsequent

year the budget is not to exceed $465,000. The difference is the estimated cost of furniture which will fall only, of course, in the first year. Except, however, that in any one year the Court may order an increase of not more than $50,000 in the amount provided by the decree. The chairman of the Appeal Board is to be paid $20,000, and each of the other members is to be paid $17,500. It is expected that the American Arbitration Association, which as your Honor undoubtedly knows has nationwide facilities for the arbitration of commercial disputes, will be able to have all the arbitration tribunals, the local tribunals, operating by February 1st of next year, and further that the Appeal Board will be appointed and ready to operate by the same date.

The task of setting up this arbitration tribunal is indeed tremendous, and until the decree is signed, of course no actual work can be done toward setting it up. If the American Arbitration Tribunal can accomplish all that it is supposed to accomplish by February 1st I think it will have accomplished virtually a Herculean task; but it is confidently expected by all those involved that it will be ready to operate by not later than February 1st of next year.

Together with the decree there has been submitted to your Honor a map or rather rules of arbitration provided for in the decree, the rules to guide both the local arbitrators and the Appeal Board, and those rules refer to a map which has similarly been submitted to your Honor. That map is to be filed with the rules and shows where each local tribunal is to be located and the territory in which it will handle disputes or controversies.

I don't believe it necessary at this point to review the rules of arbitration in detail. Suffice it to say that they [fol. 377] provide for speed but not at the sacrifice of any substantial right. They provide that in any controversy that is brought either party thereto may have notice given to any third person not joined in the arbitration who that party believes should have an interest in the outcome of the arbitration. They provide further that all parties who believe they would be interested in the outcome or affected by it may intervene in the arbitration. In short, instead of attempting to limit free and open operation of this arbitration system there is virtually an open invitation to all who might be affected by an award to come in and present their grievances or their claim to the arbitrators. These rules insure a full and fair hearing. They provide for ap-

peals in all cases. As a general rule appeals shall be had on written briefs, but they provide also that if the parties so stipulate they may have oral argument on the appeals or the Appeal Board itself may on its own motion order oral argument.

So much for the terms of the decree and the rules.

I almost forgot to emphasize what is really very important. That is that the arbitration for exhibitors is entirely voluntary. There is no legal duty on any exhibitor to arbitrate any of his claims. If he prefers to bring a treble damage suit against the distributor he is perfectly free to do so. There is no legal right taken away from him. On the other hand, the arbitration is compulsory so far as the consenting distributors are concerned. They must arbitrate every claim brought by a complaining exhibitor under any one of the sections of the decree.

I don't believe that anybody who has participated in the five months of worry and discussion and argument considers the decree a panacea or the dawn of utopia in the movie industry. At the same time I think it fair to say that both the defendants and the government honestly believe that it is infinitely to be preferred to years of litigation with the possibility at the end of the chaos that might result from divorcement. It is the hope and the desire of all that it will bring to the industry a degree of peace and good feeling. Every human safeguard that we could think of has been thrown about the operation of the arbitration system to keep it free, efficient and impartial. Events may prove the need for a modification, and jurisdiction is retained in the Court by Section XXIII of the decree for that purpose. Events may prove the failure, and if that happens it may be that there will be no alternative but for the government to press its suit. We cannot see the future. Those of us who have worked on this decree after reviewing, as I said at the very beginning, the numerous industry problems in all their ramifications with the government representatives keeping constantly before their eyes, as was their duty, the complaints of exhibitors and the complaints of public groups, are of the opinion that the decree is a desirable forward step. We believe it will work. We believe it will produce good. We trust that our belief is not ill-founded. We recommend the decree to your Honor. Thank you.

(N. B. The italics in the foregoing has been supplied by these defendants.)

[fol. 378] Again we call attention to the fact that the Paramount producer-distributor-defendants are, as exhibitors, competitors of these defendants and for the Plaintiff to ask the Court in Chancery sitting to compel these defendants who have made strenuous efforts to dispose of the nine interests, to continue those efforts, while their powerful exhibitor competitors are permitted by the Plaintiff to continue to hold the sixty Metropolitan First Run Theatres and 141 other theatres which they have acquired since the filing of the original complaint and contrary to the prayer therein, is to ask the Chancellor to commit an act of outrageous judicial oppression.

This is strongly emphasized by the statement of plaintiff's counsel in the Paramount case quoted above.

What the Court did in entering the Temporary Order was the result of consent, although coerced, but what it may do now under the express terms of that order is a matter within its own judicial responsibility and discretion.

Further Reasons Why the Retention of the Nine Theater Interests in Question (Only Eight of Which Properly Come Within the Order) Could in No Way Be a Factor in Restraining Competition.

The gravamen of the complaint in the instant case is the allegation that the eight distributor defendants distribute collectively approximately 90 per cent of the first class feature pictures and 75 per cent of all feature pictures. That the Schine defendants are uniformly granted first choice in the first run pictures, that the distributor defendants have refused to license motion pictures on a normal competitive basis, that they permitted the Schines to exhibit their feature pictures in advance of others, and that in other respects they have given them advantage over competitors.

In the consent decree entered in the Southern New York District, the five consenting defendants are restrained from licensing or offering to license a feature motion picture until it has been trade shown and notice of such trade showing published in the district trade publication having a general circulation among exhibitors. They are restrained from licensing more than five features in a group and from

requiring an exhibitor to license short subjects, newsreels, trailers or serials often referred to as shorts or to license reissued, Westerns, and Foreigns as a condition of licensing other features. The licensing of features for exhibitors in one exchange district be conditioned upon the licensing of a feature or a group of features for exhibition in theaters located in another exchange district is also prohibited. [fol. 379] They are restrained also from refusing to license pictures for exhibition in an exhibitor's theatre upon terms and conditions not calculated to defeat the purpose of Section VI if the exhibitor can satisfy reasonable minimum standards of theater operations and is reputable and responsible unless the granting of a run on any terms to such exhibitor will have the effect of reducing the distributor's total film revenue in the competitive area. In IX, it is provided, "In booking prints for exhibition by exhibitors competing on the same run in the same exchange district, a distributor defendant shall not withhold delivery of prints available in its exchange from one exhibitor in order to give a competing exhibitor a prior playing date not provided for in his license.

These restraints are relied upon by the plaintiff as grounds justifying it in permitting the Paramount exhibitor-defendants to retain the theatres held and to acquire more and they are equally applicable to the defendants here.

Like provisions were included in the Temporary Order herein, viz., no consenting defendant should enter into any franchise for exhibition for a period of more than one year, that all franchises or licenses agreements for a period or more than one year are declared to be void, and each consenting defendants is enjoined from enforcing any of the provisions of such franchises or agreements. No consenting defendant is permitted to condition the license of motion pictures to any theater or theaters owned by the consenting defendants which is in direct competition with an independent exhibition in the same city, town or village upon the licensing of motion pictures to any theater or theatres owned by the consenting defendants in a city, town or village in which all of the motion picture theaters are owned by the consenting defendants. It provides for the assessment of damages in case any independent ex-

hibitor is injured as a result of failure to comply with this provision. The Temporary Order and the decree therefore taken together effectively restrain them from doing any of the specific acts relied upon by the plaintiff as acts resulting in an unreasonable restraint of trade or a conspiracy to violate the provisions of the Anti-Trust law. There is therefore nothing in the situation as disclosed by the complaint, the Temporary Order and the Consent Decree which gives any basis for a claim that the retention of the ten theater interests in question and the acquisition of other theater interests by these defendants will result in any way in the restraint of trade or would be inimicable to the interests of the public.

[fol. 380] Also in view of the restraints that have been specifically imposed by the Court orders in these two districts, it is apparent as a matter of common sense *that the acquisition of additional theatres by these defendants and the retention of those that they have, implement rather than restrain competition and is in the public interest.*

Enough has been disclosed to show to the Court that the reason why the former owners of the interests in question were willing to sell and why they are unwilling to reacquire the theatres is because they could not operate them profitably and necessarily the proper operation of those theaters is to the advantage of the public. It should also be apparent on the face of the record that the public greatly profits by the acquisition of inadequately equipped theatres and their proper equipment and rehabilitation by those who are able through experience and the possession of the necessary means so to do and this has been a factor in giving to small communities amusement facilities comparable to those enjoyed by those which are larger.

The Court May Not Properly Proceed With This Matter On Account of the Absence of Indispensable Parties, and the Complaint Therefore Should Be Dismissed Forthwith.

In the original complaint, herein the five producer-distributors-exhibitors and the three producer-distributors who together produce the great bulk of the feature pictures were joined as parties together with these defendants. There were thus brought into the suit all of the parties necessary to a disposition of the entire controversy. As stated above, five distributors were and are exhibitors and

thus in competition with these defendants in numerous places through the theaters which they operate. The question of whether the Court might in equity and good conscience restrain these defendants from acquiring additional theatre interests while permitting the five producer-distributor-exhibitors so to do immediately arises in view of the facts hereinbefore set out. There necessarily arises also the question of whether these defendants may be compelled to dispose of interests in the ten remaining theatres acquired since the filing of the suit against them while a consent decree in another court permits the five producer-distributor-exhibitors to retain 201 theatres acquired since the filing of the complaint against them which asked that they be restrained from acquiring any such interests. It therefore appears that complete equity cannot be done between the parties to the original complaint filed herein without the presence of all. Necessarily it would be unjust to these defendants to place them in an inequitable and discriminatory situation with respect to the defendant exhibitors in [fol. 381] the matter of acquiring and retaining possession of other theatre interests. The presence of all was therefore indispensable to complete relief and the attainment of equity among all the parties concerned.

Notwithstanding this fact, the plaintiff, after the entry of the consent decree in the *Paramount* case in the Southern District, filed the amended complaint in this case May 19, 1941, wherein it eliminated the five producer-distributor-exhibitors from the case but continued to charge them with conspiracy with the three remaining distributors and the Schine defendants. Moreover, at a hearing before his Honor, Judge John Knight, May 12 and 26, 1941, in this case, counsel for the plaintiff advised the court that *the elimination of these defendants was made in compliance with commitments entered into by the plaintiff in the Paramount case in the Southern District.* (See p. 99.) The plaintiff has therefore by its own action, created a situation where the matters alleged in the original and amended complaints cannot be adjudicated and full relief afforded for the want of indispensable parties. For this reason it is incumbent upon the Court in accordance with the principles of equity procedure and the Rules of Civil Procedure governing the District Courts to suspend all further proceedings in this matter and forthwith dismiss the case on

account of the absence of parties necessary to a full and proper disposition of the matters in controversy.

Attention is called to Rule 19 which is as follows:

Necessary Joinder of Parties

(a) Necessary Joinder. Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person — should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases an involuntary plaintiff.

(b) Effect of Failure to Join. When persons who are not indispensable *but who ought to be parties if complete relief is to be accorded* between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue and can be made parties without depriving the court of jurisdiction of the parties before it, the Court shall order them summoned to appear in the action. The court in its discretion may proceed in the action without making such persons parties, *if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance* or if, though they are subject to its jurisdiction, their joinder would deprive [fol. 382] the court of jurisdiction of the parties before; but the judgment rendered therein does not affect the rights or liabilities of absent persons.

(c) Same: Names of Omitted Persons and Reasons for Non-Joinder To Be Pleaded. In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, of persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

It is noted that this is not a case where essential parties are absent because of the impossibility of obtaining jurisdiction over them and where the Court may on that account proceed to the adjudication of such matters—may be properly adjudicable among the remaining parties, *for such permissive action is confined to the case where its jurisdiction*

over them is made impossible on account of inability to serve process or where jurisdiction can only be obtained by voluntary appearance. As stated, the lack of authority under the rules of equity to proceed further in this case on account of the want of essential parties is due to the voluntary action of the Plaintiff in accordance with its commitment made to the producer-exhibitor defendants and for the very purpose of releasing them from the jurisdiction of this court. Obviously this suit should be dismissed forthwith.

Respectfully submitted, Goodwin, Rosenbaum and Meacham, 1139 Shoreham Building, Washington, D. C., and Edmund M. McCarthy, 70 Pine Street, New York, N. Y., Counsel for the above named Defendants.

[fol. 383] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO FINAL REPORT OF SCHINE CHAIN THEATRES, INC., ET AL, FILED JULY 3, 1943

At Page 11, strike out the next-to-the last sentence and substitute the following:

"The Temporary Order provides, among other things, 'As to any theatre or interest therein not reacquired by the former owner or operator under the above provisions, the consenting defendants shall generally offer the same to independent exhibitors for the same purchase price and upon fair and reasonable terms and conditions, including the payment by the purchaser of a reasonable commission when the services of a broker are necessary to consummate the sale.' These defendants state that whenever and wherever brokers asked about commissions, they clearly stated that the Court Order provided for commissions to be paid by the purchaser. After learning that no commissions were to be paid by the seller, they displayed no further interest."

Respectfully submitted, Goodwin, Rosenbaum & Meacham, 1139 Shoreham Bldg., Washington, D. C., and Edmund M. McCarthy, 70 Pine St., New York, N. Y., Counsel for the above-named defendants.

[fol. 384] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION TO DISMISS—Filed February 24, 1944

Now come Schine Chain Theatres, Inc., defendant, and its associated defendants, by their counsel, and move the Court to dismiss the above entitled cause forthwith and for ground of said motion they rely upon all the matters and things set forth in their Final Report, filed July 3, 1943, (a copy of which accompanies this motion for convenient reference), and other documents and evidence to be presented on the hearing of this motion.

Goodwin, Rosenbaum and Meacham, 1139 Shoreham Building, Washington 5, D. C., and Edmund M. McCarthy, 70 Pine Street, New York 5, New York, Counsel for said Defendants.

[fol. 385] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

MOTION—Filed February 24, 1944

Now come Schine Chain Theatres, Inc., defendant, and its associated defendants, by their counsel, and, agreeable to the terms of the Temporary Order entered herein May 19, 1942, in which it is provided that if at the end of one year from the date of the entry of the order the consenting defendants have been unable with due diligence to dispose of all the theatres and theatre interests described therein, they shall file with the Court a complete report and the Court shall thereupon make such further order as may be just in the premises,

They move the Court to order that the defendants be not required to proceed further under the order in attempting to dispose of any of the theatres or theatre interests listed therein and that the provisions of the Temporary Order entitled, "5. Acquiring Theatres" be made to harmonize with the provisions of the Consent Decree in United States of America v. Paramount Pictures, Inc., et al., Equity No. 87,273, in the United States District Court for the

Southern District of New York by restating it to read as follows:

> "None of these defendants shall, during the pendency of this proceeding or until the further order of the Court, enter upon a general program of expanding its theatre holdings but nothing in this order shall prevent any such defendant from acquiring theatres or interests therein to protect its investment or its competitive position or for ordinary purposes of its business. Proceedings based on a violation of this provision shall be only by application to the Court for injunctive relief against the defendant complained against, which shall be limited to restraining the acquisition or ordering the divestiture of the theatres or interests therein, if any, about to be acquired or acquired in violation hereof."

In support of this motion these defendants rely upon their Final Report, filed herein July 3, 1943, a copy of which accompanies this motion for convenient reference, and the matters and things therein set forth and all other pertinent facts and circumstances.

Goodwin, Rosenbaum and Meacham, 1139 Shoreham Building, Washington 5, D. C., and Edmund M. McCarthy, 70 Pine Street, New York 5, New York, Counsel for said Defendants.

[fol. 386] In the District Court of the United States

[Title omitted]

Petition for Appointment of Trustee

The United States of America, plaintiff herein, in accordance with section 4 of the temporary order entered herein on May 19, 1942, pursuant to a stipulation of the parties,[1] hereby petitions the Court for the entry of an order appointing a trustee to take possession of and sell the theatre interests described as items (2), (3), (4), (6),

[1] A copy of said stipulation and order is attached hereto and expressly made a part hereof as Exhibit A.

(7), (10), (11), (13) and (14) in said section of said order upon the following grounds:

1. The said section 4 of said order required the consenting defendants to dispose of all their interests in the theatres acquired by them since August 7, 1939, which are more particularly described as items (1) to (14), inclusive, in said section, within one year from May 19, 1942.

2. The consenting defendants have filed their final report pursuant to said section which discloses that they have been unable to dispose of the aforesaid theatre interests described as items (2), (3), (4), (6), (7), (10), (11), (13) and (14) in said section.

3. The consenting defendants by said report have asserted that they do not propose to make any further effort to dispose of said theatre interests.

[fol. 387] 4. The consenting defendants by said report have asserted that said undisposed of theatres are deteriorating and that the majority of them are "in a rather deplorable condition," because the defendants have not kept and do not propose to keep said theatres in repair.

Wherefore, plaintiff respectfully prays that a trustee may be appointed to take immediate possession of and operate the following theatres now operated by the consenting defendants:

Item (2)[1] The Strand Theatre, Cumberland, Maryland.
Item (3) The Plaza Theatre, Malone, New York.
Item (4) The Memorial Theatre, Mt. Vernon, Ohio.
Item (6) The Opera House, Lexington, Kentucky.
Item (7) The Ada Meade Theatre, Lexington, Kentucky.
Item (10) The Viv Theatre, Corbin, Kentucky.
Item (11) The State Theatre and the Appalachia Theatre, Appalachia, Virginia.
Item (14) The Liberty Theatre, Pikeville, Kentucky.

and to take possession of item (13), the 50 percent interest in the leasehold of the Margie Grand Theatre, Harlan, Kentucky, now owned by the consenting defendants, to the end that said theatres may be restored to the same condition as

[1] Number in parenthesis is number identifying theatre interest in section 4 of the order.

they were in when the said order was entered and that the consenting defendants' respective interests therein may be disposed of to independent exhibitors pursuant to the terms of section 4 of said order.

Respectfully submitted, United States of America, Plaintiff Herein, by Robert L. Wright, Special Assistant to the Attorney General.

[fol. 388] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ANSWER TO PETITION FOR APPOINTMENT OF TRUSTEE—Filed April 10, 1944

Schine Chain Theatres, Inc., and its associated defendants in answer to the petition of the plaintiff herein heretofore filed submit the following:

(1) In reply to the first paragraph of the petition they say that Section 4 of the Temporary Order entered herein May 19, 1942 provided that the defendants should dispose of their interests in theatres acquired since August 7, 1939, more particularly described therein, within one year from May 19, 1942.

That if at the end of one year they were unable with due diligence to dispose of all of said theatre interests, they should file a complete report stating the theatre interests disposed of, the theatre interests they had been unable to dispose of and the efforts that had been made to dispose of them. That such report should be filed on notice to the plaintiff, and "the Court shall thereupon grant such extension of time or make such further order as may be just in the premises."

[fol. 389] (2) Defendants duly filed their Final Report in accordance with Section 4 of the order July 3, 1943, and therein showed to the Court that they had disposed of six of the theatres listed and had made all proper efforts to dispose of the remaining ten theatres in accordance with the terms of the order and without success.

(3) These defendants deny that by said report they had asserted that they did not purpose to make any further efforts to dispose of said theatre interests.

The defendants say that the fact is that in their Final Report they set forth in detail the efforts which they had made to comply with the report and pointed out that in view of the fact that Paramount and the other four producer-distributor-exhibitors who were originally made party defendants in this cause, were permitted by the terms of a consent decree to retain all the interests in all the theatres which they had acquired since the filing of the decree against them amounting in all to 63 metropolitan first run theatres and 141 other theatres and they had been further, by the terms of the decree, permitted to acquire additional theatres and that the decree specifically provided that nothing therein should prevent any such defendant from acquiring theatres or theatre interests to protect its investment or its competitive position or for ordinary purposes of its business and that said defendants were not required by the terms of the decree to apply to the Court for permission to acquire such theatres and it was specifically provided that the only consequence of acquiring theatres or theatre interests outside of the specific provision stated was to be a review of the matter on the application of the plaintiff and an order to dispossess itself [fol. 390] of the theatre interests acquired if it were found by the Court that it had been acquired in a manner outside the specific provisions of the consent decree.

In view of this situation and in the inequity in the manner of treating these defendants and the major defendants in the Paramount case and of the efforts that had been made by the defendants to dispose of the theatre interests in question and that fact that they had actually disposed of six of the theatres by reconveying them to former owners, these defendants asked that the Court enter an order that the defendants be not required to make any further effort to dispose of the ten theatre interests and that for the purpose of putting these defendants on a plain of equality with the five producer-distributor-exhibitor defendants in the Paramount case, four of whom are their competitors, that the Court enter its order that nothing in the order "shall prevent any such defendant from acquiring theatre interests or interests therein to protect its investment or competitive position or for ordinary purposes of its business."

In said Final Report these defendants asked that the amended complaint herein filed should be dismissed forth-

with for want of necessary parties. That on or about July 20, 1943, the Honorable Tom Clark, Assistant Attorney General, called up counsel for these defendants stating that it was not the intention of the Government to take any discriminatory or oppressive action against them and suggested that the defendants' counsel make a motion that the hearing on the Schine report be postponed for six months in order to give the Government time and opportunity to determine what it was going to do with respect to the defendants in the Paramount case.

That on August 4, 1943, a letter was received by defendant's counsel over the signature of the Honorable Tom C. Clark, but in his absence in which was enclosed a copy of the petition for the appointment of a trustee which they purposed to file in the above case. That this petition was [fol. 391] identical with the present petition finally filed in this Court February 24, 1944. That upon the receipt of this letter, defendants' counsel prepared the motions later filed February 24, 1944 and which are before the Court at the present time. That when notice was served on said Assistant Attorney General that it was the defendants' intention to file said motions, he declined to accept service and asked that the defendants' counsel call him up.

Said Assistant Attorney General stated that he had not decided to file a petition and asked defendants' counsel to withhold the filing of the motions aforesaid. That on August 19, said Assistant Attorney General took up with defendants' counsel the matter of a letter which defendants were sending in response to inquiries in regard to the theatres in question in which these defendants said in substance: "We applied to the United States District Court at Buffalo for permission to retain the theatres unsold and until the Court acts on this, the matter of the unsold theatres is in abeyance." The Assistant Attorney General suggested as a substitution for this where anyone expressed a desire to purchase any of the ten theatres covered by the Temporary Order, it would be desirable for defendants to say very courteously that they would be glad to have them look at the theatre and that he would find the terms on which the theatres were offered for sale in the Court's Temporary Order, but the whole question of whether any of these theatres should be sold was before the Court on defendants' Report. That until the Court acted, the whole matter of the disposition of the theatres was in abeyance.

These defendants further say that they have scrupulously followed the suggestions of said Assistant Attorney General and that the matter of what disposition should be made of the remaining ten theatres was postponed until such time as it might be acted upon by the Court.

[fol. 392] The Assistant Attorney General has on several occasions advised the representatives of these defendants that he desired that there should be no discrimination in the manner in which they were treated, and that he desired further to work out a solution of the whole moving picture industry and that the matter of deciding the motion intended to be presented and which is now presented to the Court should be postponed until he had an opportunity to do so. No further action was taken by the Department of Justice until the service of the notice and the filing of this petition, February 24, 1944.

(4) With respect to Section 4 of the petition in which it is said that defendants have asserted in their report that such undisposed of theatres are deteriorating and that the majority of them are in a rather deplorable condition, they deny that any such deterioration has occurred because of a failure on the part of the defendants to keep them in a proper condition. These defendants say that, on the contrary, they have at all times done what was possible to keep said theatres in good condition and repair except for replacements and improvements necessitating capital expenses *for replacements and improvements necessitating capital expenses* and that the situation with reference to this is as follows:

After these defendants acquired the ten theatres listed in the petition, they expended upwards of $135,000 for the purpose of putting them in satisfactory and proper condition. It is, however, the fact that in the case of all moving picture theatres like these in question which are in operation continuously during the day and evening during seven days of the week, there is constant movement of people which results in unusual wear, both on the carpeting and the seats. That to meet this situation, defendants, sometimes from week to week, sometimes from month to month, and sometimes at longer periods, replace the seats that [fol. 393] have been worn by this unusual use and patch and repair so far as possible the carpeting and also do such other repairs as the usual use of the theatres requires.

The defendants further say that there is also necessary and unavoidable deterioration in the screens on which the pictures are shown and the projection equipment, and that with reference to all these items the restrictions of the War Production Board prevent the obtaining the material for any extensive replacements and that is the case with the owners of these theatres, and would be the case with any trustee appointed by the Court. There are several of these theatres which are in some need of partial or complete redecorating. The defendants plan to do this redecorating as rapidly as the necessary priorities can be obtained and they are naturally in a position to do this work more effectively and economically than it could be done by a trustee. That the statement in their Final Report that a majority of the theatres were in a rather deplorable condition was made not by way of compairson with the standards maintained by theatres generally but those which these defendants attempt to maintain, even under present restrictions with respect to the acquiring of materials necessary for replacements and improvements.

(5) Further answering, these defendants say that on account of the nature of their organization and experience in the matter of operating theatres and, in particular, in connection with the operation of the theatres in question, they are in a far better position to operate these theatres without loss and to maintain them in a proper condition that would be the case with any trustee or trustees appointed by the Court. That such appointment would not only not serve any [fol. 394] useful purpose but would cause ruinous expense and a further deterioration in the theatres in question. These defendants further submit that the only power of a court in equity to appoint a trustee is for the purpose of preserving the property for the benefit of those who have a property interest therein and that in the instant case the only persons who have such a property interest are these defendants themselves.

That so far as the petition seeks the appointment of a trustee for the purpose of carrying out the orders of the Court, they respectfully show that, as above stated, they have not taken any recalcitrant position and that their withholding further efforts to dispose of the theatres and theatre interests in question as aforesaid was in strict accord with their understanding with the Department of Justice.

That the matter of a further order upon the Final Report is now brought to the Court for the first time and these defendants stand ready and willing to carry out such orders as the Court may, after due consideration, enter herein.

Wherefor, defendant respectfully pray that the petition of the plaintiff for the appointment of a trustee be in all respects denied.

Respectfully, (S.) Goodwin, Rosenbaum & Meacham, 1139 Shoreham Building, Washington 5, D. C., (S.) Edmund M. McCarthy, 70 Pine Street, New York 5, New York, Counsel for these defendants.

[fols. 395-397] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

CERTIFICATE OF CLERK

I, May C. Sickmon, Clerk of the United States District Court for the Western District of New York, do Hereby Certify that there is no record in the files of this Court of a Motion by the Defendants for leave to acquire the Liberty Theatre at Cumberland, Maryland, referred to as Item 7 in Plaintiff's counter praecipe herein.

In Witness Whereof I have hereunto set my hand and the seal of this Court this 2nd day of July, 1946.

May C. Sickmon.

Subscribed and sworn to before me this 2nd day of July, 1946. Margaret E. Baysor, Notary Public—Niagara County. Certificate filed in Erie Co., N. Y.

[fol. 398] IN UNITED STATES DISTRICT COURT

[Title omitted]

TRANSCRIPT OF HEARING

Proceedings before Honorable John Knight, United States District Judge for the Western District of New York, March 20, 1944, at 12 o'clock noon.

Appearances: Honorable George L. Grobe, United States Attorney for the Western District of New York, by Robert L. Wright, Esq., Special Assistant to the Attorney General.

Messrs. Goodwin, Rosenbaum & Meacham, Shoreham Building, Washington, D. C., by Clarence N. Goodwin, Esq., Attorneys for the Defendant.

[fol. 399] PROCEEDINGS

THOMAS H. BURKE, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Goodwin:

Q. Where do you live?
A. Cumberland, Maryland.
Q. What is your address there?
A. My residence, 122 Green Street.
Q. I believe that you are the owner of the Liberty Theatre?
A. Yes, sir.
Q. When did you acquire that theater?
A. 1918, I think, or 1919.
Q. Was that your first venture in the theater business?
A. No, sir.
Q. When did you first become interested in moving pictures?
A. 1914.
Q. You have been continuously engaged as an exhibitor since that time?
A. Yes, sir.
Q. I believe that there was a mortgage or is a mortgage on [fol. 400] the property?
A. Yes, sir.
Q. When was that mortgage made?
A. 1936, I think it was.
Q. 1936?
A. That is one of them. There was one prior to that. I don't know just the date.
Q. Was that before or after the defendants in this case acquired the Strand Theater?
A. That was before.
Q. Before they acquired the Strand Theater?
A. Yes, sir.
Q. How much is that mortgage?

A. The mortgage now—one of them is $50,000.

Q. Yes.

A. And then there is a second mortgage. It was $48,000; it is now $32,000, something, I think.

Q. Are both of those mortgages referred to in this document, in the proposed bill of sale?

A. Oh, yes, there is a confessed judgment note of $12,150, I think, with some interest.

The Court: Is that on top of the mortgages, you mean?

The Witness: Yes, sir.

Q. Was there any pressure brought to bear on you for the payment of the bonds which represent the first mortgage?

[fol. 401] A. Not the first mortgage, no, sir.

Q. That is on the second mortgage?

A. That is on the second mortgage, on the confessed judgment note.

Q. Who owns that mortgage?

A. Confessed judgment note and the second mortgage, Second National Bank of Cumberland.

The Court: They own both of them?

The Witness: Both of them, that is, the confessed judgment note and the second mortgage.

Q. By the way, how old are you?

A. 76.

Q. When did the bank bring pressure to bear on you for the payment of that note secured by the second mortgage?

A. It was January, I think. I can't just recall the exact date.

Q. January what year?

A. 1943, I think. I am not sure. Yes, 1943.

Q. January, 1943. Did they continue to bring pressure or what?

A. Yes, sir, they did and I paid some money each month, and the interest each month, and up until September, 1943, and in September, 1943, they refused to renew my note and said they had to have the money.

Q. That was September, 1943?

[fol. 402] A. Yes, sir.

Q. Were you able to pay the money?

A. No, sir.

Q. What did you do then?

A. Well, I tried to dispose of my place. I gave it to real estate agents to dispose of it.

Q. Who are your real estate agents?

A. Mellison & Blaul.

Q. What efforts did they make to dispose of this theatre?

A. Well, I don't know the entire efforts which they made, but I do know they contacted the Schine people.

Q. Did they contact any one else?

A. That I don't know. I presume they did.

Mr. Wright: I don't see how Mr. Burke can testify to what the agents did, if the Court please.

Mr. Goodwin: Is there an objection?

Mr. Wright: I should suppose if you wanted to go into what the agents did, you would have a representative of the agents.

Mr. Goodwin: I suppose that is true. I suppose the agents would be the best evidence, but I would think any one employing them would know something about what the agent had done in the matter.

Mr. Wright: I haven't any objection to his testifying to what he knows. I understood the question as asking for [fol. 403] something that the agent had done.

The Court: That is true. It is objectionable. Did they advertise? Did you know about their advertising it?

The Witness: They did advertise it, sir.

Q. In a manner of speaking, did you bring any pressure to bear on your agents? Did you follow it up with your agents?

A. Why, yes, sir. The bank was pushing me, and I was pushing the agents.

Q. Do you know whether or not your agents contacted any of the Schine defendants through Mr. May?

A. I do know they did contact him, yes.

Q. When?

A. That I could not state just positively. It is, I think, along about September or October, 1943.

Q. Do you know what was the result of that contact?

A. The result of it is, so far, that they contracted a sale subject to the ruling of the Court.

Q. I mean at that time? Was there any answer made at that time in September or October?

A. No, they did not, with the Schine or anybody, no, sir. Not at that time; it was later on.

Q. I don't know whether you know this or not. Will you say whether in January or February of this year an ap-
[fol. 404] proach was made on your behalf to the Schines to purchase this theater?

A. Well, I do know that they told me that they had contacted Schines, that they would not have anything to do with it on account of the consent decree, that they were working under, that they could not buy it. So, I finally then went to Washington by appointment to meet Mr. Clark.

Q. What date was it you went to Washington by appointment to meet Mr. Clark?

A. I could not give you that date exactly, sir.

Q. Was it February or January?

A. It must have been January. Mr. Clark was ill, anyhow, and I was talking to Mr. Wright.

Q. Did you state the situation to Mr. Wright?

A. Yes, sir.

Q. Did you tell him that you had contacted the Schines, and they refused to have anything to do with it unless the sale of them was approved?

A. Yes, sir, I told Mr. Wright that the Schines would not consider it or would not buy it unless I could get permission from the Department of Justice.

Q. Permission from the Department of Justice?

A. Yes, sir.

Q. What did Mr. Wright tell you at that time?

A. Mr. Wright told me that if the Court would permit
[fol. 405] it, that they would not interfere.

Q. Now, did you take that word to the Schines?

A. I took it to my agents, and they took it to the Schines.

Q. Then, there were negotiations?

A. Yes, sir.

Q. I understand that on the 26th of February—was it the 26th of February you had a conversation, telephone conversation with Mr. Clark?

A. I think it was the 26th, yes, sir.

Q. What did Mr. Clark say? What did you tell Mr. Clark?

A. Well, I told Mr. Clark the same thing that I told Mr. Wright, that if I could sell to the Schines, I could get more money out of the Schines than anybody else. They had offered me more money, and if I could get permission from the Department of Justice that they would not interfere, I would enter into negotiations.

Q. What did Mr. Clark say at that time?

A. Well, he told me the same thing, that if the Court permitted it, they would not interfere.

Q. Did you give that information to Mr. May or to the Schines?

A. To Mr. May. First I gave it to my agents, and then Mr. May.

Q. With reference to that telephone conversation, which you think was February 26th—apparently the 25th—did you have any letter confirming that from Mr. Clark?

[fol. 406] A. Yes, sir.

Mr. Goodwin: Have you the letter, your Honor?

The Court: It is right here.

Q. Is this the letter (handing document to witness)?

A. Yes.

Mr. Goodwin: I would like to have it marked for identification.

(Thereupon letter from Mr. Clark to Mr. Burke, dated March 2nd, 1944, referred to, was marked as Defendants' Exhibit A for identification.)

Mr. Goodwin: May I read this into the record, your Honor? We won't take too much time.

The Court: Any objection?

Mr. Wright: No.

Mr. Goodwin: (Reading.) "Tom C. Clark," and the seal of the Department of Justice, "Assistant Attorney General, Washington, March 2nd, 1944.

"Dear Mr. Burke: Reference is had to our telephone conversation of February 25th and your letter of February 26th regarding the purchase of your theatre by the Schine Circuit.

"I shall, of course, be delighted to talk with the attorney for the Schine people, and as explained to you, we will have [fol. 407] no objection to the purchase of this theatre provided it is submitted to and approved by the court."

By Mr. Goodwin:

Q. I hand you what purports to be a copy of a letter addressed to Mr. Thomas Clark, Assistant Attorney General, February 26th, 1944. Is that the letter referred to?

A. Yes, sir.

Q. Is that a true copy of the letter?

A. Yes, sir.

Mr. Goodwin: Which I assume is in the files of the Department. May I read this in evidence, your Honor?

Mr. Wright: Do you mind if I see it?

Mr. Goodwin: If you have the original we might introduce that, but if you have no objection to the copy——

By Mr. Goodwin:

Q. It is understood, I take it, that this letter was written and received prior to the letter you just introduced?

Mr. Wright: No.

The Court: Yes.

A. Yes, sir.

Mr. Goodwin: The letter I just introduced was the letter of March 2nd.

The Court, Oh, March 2nd. You said February 26th. [fol. 408] Mr. Goodwin: This letter is the letter written February 26th, and this is an answer. This refers to the telephone conversation of February 25th. It will speak for itself, if I may read it.

The Court: It is the letter referred to in Exhibit A.

Mr. Goodwin: No, the letter referred to in Exhibit A——

The Court: It says so.

Mr. Goodwin: Yes, this is the letter. I beg your pardon. Your Honor is correct. It is the letter referred to in Exhibit A.

"Liberty Theater, Owned and Operated by Thomas H. Burke. February 26, 1944.

"Mr. Thomas Clark, Assistant Attorney General, Department of Justice, Washington, D. C. Dear Mr. Clark: Referring to our telephone conversation yesterday at about 4:45 P. M. when you told me that the Department would allow the Schine Circuit to buy my theater, without any objection from you. I have instructed my agents to get in touch with the Schine people and to tell them to send their attorney to your office and you would personally assure them that it would be all right for them to buy my theatre.

"If this sale goes through, it will be a big relief to [fol. 409] me as I will be able to pay all debts and have enough left over to live comfortably.

"Please allow me to thank you for your interest in this matter.

Very truly yours, Thos. H. Burke."

By Mr. Goodwin:

Q. Did you get in touch with the Schine Theatre and enter into a contract for the sale subject to the approval of the Court?

A. Yes, sir.

Q. It was presented to the Court this morning, and it appears to be the first of March. I understand you verify that as the correct date?

A. Yes, sir.

Q. That is the day before Mr. Clark's letter, but subsequent to your conversation with Mr. Clark?

A. Yes, sir.

Q. Did the Department at any time in any way suggest any objection to the acquisition of this theater by the Schines?

A. No, sir.

Q. Now, there is one disagreeable matter I wish to refer to. In addressing the Court this morning, counsel for the [fol. 410] Government suggested that he would like to have this matter disposed of before the defendants had an opportunity to buy off any other theatre or any other government witness, and he said that you are a government witness who had been subpoenaed when the case was about to be tried before. You were subpoenaed?

A. Yes, sir.

Q. And were here for that trial?

A. No, sir, I was not here.

Q. Did the defendants in any way intimate that their purchase of the theater had anything to do with the question of whether you were a witness or not?

A. No, sir, never talked with them one way or the other as to the——

Q. No reference was made to the fact that you had been subpoenaed as a witness?

A. No, sir.

Mr. Goodwin: You take the witness.

The Court: What is the purchase price in the contract? Are you offering the contract?

Mr. Goodwin: I will now. I offer it in evidence. I offer in evidence the letter that I read into the record. That is Exhibit B.

The Court: Exhibit B.

[fol. 411] (Thereupon letter from Mr. Burke to Mr. Clark, dated February 26, 1944, referred to, was received in evidence and marked as Defendants' Exhibit B.)

By Mr. Goodwin:

Q. Is this the document for the sale of the theater which you signed?

A. This is my testimony. That is my affidavit.

Q. Oh, I beg your pardon. Excuse me. (Handing document to witness.)

A. Yes, sir.

Q. This agreement was not made until after you had received the assurance you have testified to from Mr. Wright and Mr. Clark? It was not made until after you received those assurances?

A. That is right.

Mr. Goodwin: I offer that in evidence.

(Thereupon proposed agreement, referred to, was received in evidence and marked as Defendants' Exhibit C.)

Cross-examination.

By Mr. Wright:

Q. You just referred to an affidavit that counsel has there. Could you tell me what that was or what the purpose of it [fol. 412] was?

The Court: Testimony, he said.

Mr. Goodwin: This affidavit, your Honor, may——

The Court: He is asking the witness now.

Mr. Goodwin: Do you wish this to go in evidence?

Mr. Wright: We would like to know what it is.

By Mr. Wright:

Q. When was the affidavit given?

A. I don't know the dates.

Mr. Goodwin: Do you want to read it in evidence?

Mr. Wright: I would like to know what it is, that is all.

The Court: Let counsel see it, then.

Mr. Goodwin: It speaks for itself. May I ask one more question which, probably, I omitted, your Honor.

By Mr. Goodwin:

Q. Did the Schine defendants or their agents in any way bring pressure to bear upon you to sell this theater to them? Did they use any threats or any coercive methods to persuade you to sell it?

A. No, sir.

The Court: Cross-examine.

Cross-examination (Continued).

By Mr. Wright:

Q. What is the amount of your investment in the theater? [fol. 413] A. Well, sir, that theater, purchase price and improvements, about $340,000.

Q. $340,00?

A. Yes, sir, that is counting loss by flood.

The Court: Loss by flood?

The Witness: Yes, sir.

The Court: Some damage done after you bought it, you mean?

The Witness: Yes, sir.

Q. How much was the damage?

A. Damage possibly was fourteen or sixteen thousand dollars. The original purchase price was $175,000.

Q. $175,000 was what you paid for it?

A. Yes, sir.

Q. Do you recall when it was that Schine first came into Cumberland?

A. It was about 1940, somewheres in there.

Q. When they bought the Strand Theater?

A. Yes, sir.

Q. And then you recall that shortly after that you had difficulty obtaining product for your theater?

A. Warner pictures, yes, sir.

Q. You had played the Warner pictures for how long?

A. About 15 or 16 years, something like that.

Q. Then, it is a fact, is it not, after Schine acquired the Strand Theater, some of the top Warner pictures were sold [fol. 414] away from your theater to the Strand without their giving you any opportunity whatsoever to bid for them?

A. That is true.

Q. That happened first with respect to the picture "Meet John Doe" of 1941, did it not?

A. Yes, sir.

Q. You got in touch with Warner Brothers about that?

A. Well, I don't know as—I did get in touch with them. They said the sales were made in New York. It had nothing to do with it in Washington.

Q. Their explanation to you was that the picture had been sold to the Schine Circuit, is that right?

A. Yes, sir.

Q. What was the date of that?

A. I could not give it to you offhanded.

Q. Well, you know about when it was?

The Court: He said in 1941.

The Witness: 1940—about 1941.

Q. You regarded that as unfair discrimination against your theater, did you not?

A. At the time I did.

Q. You wrote to Harry Warner of Warner Brothers about it?

A. Yes, sir.

Q. You also complained to the Department of Justice with respect to that sellaway, did you not?

[fol. 415] A. Yes, sir.

Q. Then the same thing happened later on in 1941, with respect to the picture "Sergeant York" did it not?

A. Yes, sir.

Q. That is, you negotiated for the picture or attempted to negotiate for it, as I recall your letter to us, and the picture then turned up at the Schine Strand Theater without your having been previously advised that it would not be sold to you?

A. Yes, sir.

Q. What was the Warner Brothers' explanation for that?

A. Same as the other, it was sold in New York. They had nothing to do with it.

Q. I did not get that.

A. It was sold in New York. Washington Branch did not have anything to do with it.

Q. They sold it in New York, you say?

A. Yes, sir, New York authorities of the Warner sold it to the Schine Circuit.

Q. In New York?

A. Yes, sir.

Q. And this was before—without giving you any opportunity to bid for the picture at all, is that right?

A. Yes, sir.

Q. Then, that same practice continued, did it not, [fol. 416] throughout the 1941-1942 motion picture season with respect to the top Warner pictures, is that right?

A. Yes, sir.

Q. That is, the best of the Warner product?

A. Yes, sir.

The Court: You mean up to the time of the trial in 1942, or the hearing in 1942?

Q. This continued throughout the spring of 1942, did it not?

A. Yes, sir.

Q. You recall you were summoned to appear as a witness for the trial commencing on May 19th?

A. Yes, sir.

Q. And then you were notified that you did not have to appear on that day, but you would be advised as to the particular day that you would be needed, is that right?

A. Yes, sir.

Q. After the temporary order was entered here on May 19, 1942, you were still unable to negotiate for the top Warner pictures?

A. Yes, sir.

Q. When was the first time that Schine made any attempts to buy your theater?

A. Well, we discussed it, Mr. May and I, several times, but we could never come on terms.

Q. When was the first time?

[fol. 417] A. I could not just say when it was, sir. It was about 1942, or possibly early 1943.

Q. They had tried to buy your theater before that, had they not?

A. It might have been——

Q. After you first began to lose the Warner pictures?

A. After they got the Warner pictures Mr. May and I talked, yes. They had—a man, I don't know his name, came around. I don't just recall his name, and then Mr. May called me.

Q. That was in 1941?

A. 1941.

Q. Can you recall what those conversations were that you had with Mr. May?

A. No, sir, I do not. I know he said the price was too much.

Q. What was the price, then?

A. I asked him $225,000 then.

Q. And was there any suggestion as to what would happen to you in the event, or your theater, in the event it was not sold to Schine?

A. No, sir.

Q. You know Mr. May did not make any express reference when he talked to you, as to what was happening with reference to the Warner product?

[fol. 418] A. No, sir.

Q. The pictures of Universal, half of the first run, you know is also sold away from you to Schine in the same way as these Warner pictures, were they not?

A. That was 1932, I think.

Q. It could not have been 1932?

A. 1942.

Q. Before the case came on for trial here in the spring of 1942?

A. No, I think it was after that.

Q. Can you tell us just about when it was and what happened?

A. Possibly the fall—along about July or August is when we buy the pictures, and I presume—I could not tell you exactly.

Mr. Goodwin: What year was that?

The Witness: I think it was 1942.

Mr. Goodwin: You mean before or after you came here to be a witness for the government? Was it before or after?

The Witness: After.

By Mr. Wright:

Q. That would be the pictures for the 1942-1943 season?

A. Yes, sir, I am pretty sure that is it.

Q. You had been playing Universal first run in Cumberland for how long?

[fol. 419] A. I had only been playing them a couple of years.

Q. You had, however, been the regular——

A. I had been buying some few pictures, but as to take the entire lot——

Q. You had been their only first run account in Cumberland?

A. No, Miss Fisher had some of them.

Q. Tell us just what happened when you attempted to negotiate for the Universal pictures for 1942-1943?

A. The salesman's explanation was that the Schine Circuit used so much of their picture product, that they would have to sell them in Cumberland. Then, when I told him about it, he said I should not have told him.

Q. Told him about what?

A. About selling away, when I told him I told the Department of Justice.

Q. He said you should not have told the Department about that?

A. Yes, to get him in trouble.

Mr. Goodwin: Did you tell the Department?

The Witness: Yes, sir.

Q. Regardless of whether it got him in trouble or not, it is a fact Universal did sell half of the product away to the Schine Circuit without giving you any opportunity to bid for it at all?

A. They sold it to me with the privilege of selling one-half [fol. 420] in Cumberland. That is the way the contract read.

Q. Actually what you got was the Universal pictures that Schine did not want, is that right?

A. They aimed to split them 50-50. They give—that is, good and bad, A and B.

Q. You were able to purchase split?

A. Yes.

Q. But actually you needed all of the product?

A. Yes, I could have used it.

Q. And you were given no opportunity to negotiate for the half of the split that Schine got, is that correct?

A. That is right.

Q. And the reason for that as the salesman told you was that the other half had to be sold to Schine because the Schine Circuit as a whole used so much Universal product, is that right?

A. Yes.

Q. During this period of the Universal and Warner sell-aways, you were in more or less constant touch with the Department, were you not? You wrote us about those things?

A. Yes, sir.

Q. Do you recall when it was you first came to see me about selling your theater?

A. I don't recall the date.

Q. It was some time in the fall of last year, was it not?

[fol. 421] A. Yes, sir, I think it was.

Q. You remember we discussed the situation in Cumberland, both with respect to a possible sale of your theater and the product situation there, too, did we not?

A. I don't recall whether we said anything about the product or not, but I do know we discussed the sale of the theatre.

Mr. Goodwin: What theater?

The Witness: This.

Mr. Goodwin: This theater?

The Witness: Yes, sir.

Q. You recall, do you not, I told you in so far as the Department was concerned, the Schine was the last person we would like to see acquire that theater?

A. I don't recall that. You might have.

Q. Do you remember we did discuss whether or not it could be sold to an independent?

A. I just don't recall that. I know I told you I could get more money out of Schine than I could any place else, and the bank was forcing me, and if I could sell to Schine it would permit me to pay off my indebtedness and have some money left, rather than have the bank foreclose on me.

Q. You told me you could not find any other buyer than Schine who would pay you a sufficient amount to give you something over and above the indebtednes, is that right?

[fol. 422] A. Yes, sir.

Q. I made it clear to you at that time did I not, in so far as the Department was concerned, we felt that every effort should be made to find an independent buyer for that theater before it was allowed to go to the Schine Circuit, isn't that right?

A. Possibly it is. I just don't recall that, sir. You may have said that. I just don't recall it. I know we talked for quite a little bit there.

Q. You were always told, were you not, both by Mr. Clark and by myself that in no event could there be any sale of that theater by agreement with us, that you would have to have the Court's approval in any event?

A. Yes, sir.

Q. Isn't that correct?

A. Yes, sir.

Q. You, I take it, made the same representation to Mr. Clark that you made to me, that only by selling to Schine would you be able to salvage any part of your investment in the theater?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. It was on that basis that you obtained the letter that was introduced in evidence here, saying that if the Court [fol. 423] was willing to approve the sale, the Department would not stand in the way of it?

A. Yes, sir.

Q. As far as you were concerned, I take it, the inability to compete for products, for film products in that town, had some effect on your desire to sell, isn't that correct?

A. Well, it did affect my business.

Q. If it were not for the pressure exerted upon you by the bank and by Schine in the form of the sellaways of this product, you would be glad to continue in business, would you not?

Mr. Goodwin: I object.

The Court: Overruled.

Mr. Goodwin: Let him ask about each one, if he wants to.

The Court: No, I will let him answer the question.

The Witness: The bank was the one that brought the pressure. I would not be selling now or trying to sell.

Q. What other theaters are there in Cumberland?

A. There is about seven there, I think.

Q. There are three first-run theaters, are there not?

A. Yes, sir.

Q. Schine has the Strand?

A. Yes, sir.

Q. And they play first run products of all the companies?

A. Paramount, Fox, Warner.

[fol. 424] Q. And half of the Universal?

A. Not this year. They did not get the half this year.

Q. They omitted half of the Universal this year?
A. They could not get together.
Q. What do you have in the Liberty Theater?
A. I have RKO——
Q. Go ahead.
The Court: What do you have?
The Witness: I have RKO and Universal, and then I once in a while buy from an independent a single picture.

Q. You got Universal again this year after Schine had passed it up, is that right?
A. I don't know how about that.

Mr. Goodwin: I object to the question. What is the question?
The Witness: I got them. I don't know why, but they came around this year and sold me the entire lot.

Q. You got the lot?
A. But they have a clause in there, they could sell not only to Schine but anybody else, half of the product in Cumberland.
Q. You have it subject to a later determination as to whether Schine wants to use half or not?
A. Schine is not mentioned anyway in Cumberland.
[fol. 425] Q. What is the third first run theater there?
A. Mrs. Fisher, Maryland Theater.
Q. What does she have?
A. She has Metro, and I think she has some of the Columbia, possibly all. I don't know. United Artists. Then she has Monogram, and several other of the smaller companies.
Q. Those three are the only first run theaters, is that right?
A. Yes, sir.
Q. You say there are how many other theaters there?
A. Let's see. There is four others.
Q. Can you name them and tell us who owns them?
A. One is the Garden, a second run run.
Q. Who operates that?
A. Magruder, and the New Theater, South Cumberland, Trunant runs that.
Q. That is the name of the owner?
A. That is the name of the owner. I don't know what his first name is.

Q. That is a second run theater?

A. That is a second run, and then there is another one, I don't know the name of it, Spriggy Lloyd. I don't know the name of the theater, though.

Q. That is three. I thought you said there was one more.

A. There is three others—the Embassy.

[fol. 426] Q. That is a second run theater?

A. That is a second run theater that is owned by Mrs. Fisher. She owns both the Maryland and the Embassy.

Q. Had you discussed the sale of your theater to Schine with any of these other operators in town?

A. No, sir.

Q. Do you know what their feelings about the matter are?

A. I don't know.

Q. If it should appear that one of these other operators in town were willing to pay you as much or more for your theater as Schine has offered to pay, you would have no objection to selling to them, would you?

A. I would not, but there was none of them made any offer, and so far as I know now, there is none made any offer, and they would not do it while I wanted to sell, and Schine is the only people that offered to buy it.

Q. What was the name of these agents that you say represent you?

A. Mellison & Blaul.

The Court: You mean his real estate agents?

Mr. Wright: Yes, your real estate agents.

The Court: What does this offer amount to under this agreement?

Mr. Wright: A total of $130,000.

The Witness: $130,000 to the real estate men. What they [fol. 427] get over that is theirs.

The Court: You mean subject to the mortgages?

The Witness: Yes.

The Court: That would be practically $230,000?

Mr. Wright: No, I take it the payment—the mortgages, prior to indebtedness is to be paid off out of the $130,000.

The Court: $130,000?

The Witness: Yes.

By Mr. Wright:

Q. Is there any one else other than yourself and these agents who have an interest in the theater?

A. No, sir.

Q. You say you gave the agents an option by which they get anything over $130,000 that they receive for the theater?

A. Yes, sir.

Q. When did you give that option?

A. The option, I think, would be out May 1st, I think. I gave it to them for three months.

Q. I say, when did you give them the option first?

A. Must have been in December or January, I can't recall.

Q. In December or January. How did you happen to make the option arrangement with them?

A. Well, Mr. Mellison is in the loan business and, as I understood it, he had made a loan for a merchant there in [fol. 428] town, and he got some money from New York, and I went to see him, and he got in touch with some man from New York. He came down to see me to make a loan, to take up all these loans, but he would only put up $75,000, so it would not be sufficient to take care of all the loans. At that time I owed $52,500 on first mortgage, and I owed about $45,000 judgment note on the second mortgage, and then he asked me for an option to sell it, possibly he could sell it. I don't know who he was communicating with.

Q. You don't know what negotiations the owners of the option had had with other prospective purchasers?

A. No, sir, the only one they have ever come to me was the Schine.

Q. So, as far as you are concerned, you don't know how much Mrs. Fisher may have offered them for your theater, is that right?

Mr. Goodwin: I don't think he ought to speculate on what some one might have done.

Q. I am asking what he knows.

A. I don't know anything about it. She never made me an offer. If she made an offer, I don't know it, only what I have heard here today.

Mr. Wright: If the Court please, I don't think we can get satisfactory information on this point except through [fol. 429] the testimony of these agents, or from Mrs.

Fisher, but the Department on March 14th addressed a letter to these other theater owners in which we said that Schine had filed this application——

Mr. Goodwin: Are you reading from a letter to us?

The Court: It is not for the record.

Mr. Wright: Yes, I am referring to letters which were sent out to the other theater owners in town to find out what their attitude would be toward this acquisition. We have replies from two of them, one of them from the manager of Mrs. Fisher who was out of town at the time the letter was received, and the other from Magruder, the owner of one of the second run theaters that Mr. Burke referred to, both of which said they would desire to oppose——

Mr. Goodwin: Just a minute. Are you offering these in evidence?

Mr. Wright: No, I am merely stating the facts. I am laying the foundation for the necessity, I think, of hearing from these other people.

The Court: I don't know as it is sufficiently shown. If they are objecting, that is one thing. If they are making [fol. 430] an offer, that is another thing. This man would be the residuary legatee, that is all.

Mr. Wright: One of them says she is actually making an offer of $140,000 for the theater, and that $5,000 of an option has been deposited with the agents.

The Court: What difference does it make to you how much he gets for it?

Mr. Wright: It does not make any difference to the government, except, the only theory on which we ever told him, believing he could secure the Court's approval on Schine, was on the theory that that was the only way in which his investment could be salvaged. If it appears there is another buyer for that theater which will permit him to realize the same amount that he would from Schine, then, as far as we can see, there is no excuse whatsoever for approving the sale to Schine.

The Court: These other people have theaters there.

Mr. Wright: But they are not under a court order.

The Court: I know that, but the question here is if it is in violation of the order, or based on the theory that they would be apt to violate the law or the order.

[fol. 431] Mr. Wright: The theory of the order is simply this: It is intended to save independent competition.

The Court: How do you do it, when you let—Mrs. Fisher has two theaters and would have another one, which would be three, and yet Schine only has one?

Mr. Wright: That is the only way you can have independent competition. Where the circuit comes in, we know from what we just heard, as to what happens in the product situation. There is all the difference in the world between a Schine Theater in Cumberland and an independently owned theater.

The Court: You have a remedy under the present law. The theater companies have a remedy under the present law. The law itself provides for competitive bidding for pictures.

Mr. Wright: The point is, the law was violated in this instance. Schine proposes——

Mr. Goodwin: Wait a minute.

Mr. Wright: Proposes to benefit from the violation here by acquiring the theater.

Mr. Goodwin: Just a minute, now. What was the violation of the law?

Mr. Wright: The sellaways of both Warner and—that is [fol. 432] what this suit is about, is exerting circuit buying power to compel the major film companies to discriminate against independent theaters in exactly the way in which the discrimination occurred here.

Mr. Goodwin: There is nothing in his testimony to that effect.

Mr. Wright: That is what the suit is all about, and that is why we obtained the order that we did, which ordered Schine to get out of the situation that it had entered into since the suit was filed, and to prevent them from continuing to pick up theaters——

The Court: Why would your superior, Mr. Clark, tell them it was all right to go ahead?

Mr. Wright: The only basis on which he was told that was his representation that only by a sale to Schine——

The Court: He knew Schine was the one against whom the suit was, and the one you are claiming now is attempting to operate in violation of the law. You knew he was a party, did you not?

Mr. Wright: He did not give him any unqualified approval. He said if the Court would take the responsibility, and, as I say, the only reason that we ever did that was [fol. 433] because we did not feel that we could stand there

and say to him "You have got to lose what you have invested in this theater, merely to comply with our order." If it was a question of his realizing the money on his investment only by a sale to Schine, then we were prepared, at least, to go along with him and not actively oppose, but, if, as it now appears, he can salvage his investment without a sale to Schine, we certainly do not want to see the theater go to Schine in violation of that order.

The Court: This other woman, Mrs. Fisher, has two theaters in the same place, which would be three if she bought this.

Mr. Wright: That is right.

The Court: What better position would you be in if she bought it, except that Schine has the larger circuit?

Mr. Wright: That is precisely what our suit is about. It is only on the theory that Schine's possession of theaters in these competitive situations is a threat against competitive distribution of pictures that we filed the suit; to limit Schine Circuit's buying power. That is the purpose [fol. 434] of the suit. What we are trying to do is save independent competition, that is the local operaters.

The Court: Can you save it by the present law that provides for your consent decrees, and so on?

Mr. Wright: If the Sherman Act alone were sufficient, of course, there would be no necessity for the suit. The purpose of the suit was to implement the Act, and so say "By decree we do make it possible for the independent operator to survive." That is what is at stake here in Cumberland, and whether Cumberland is going to remain an independent town or become a Schine town. We already have an order that requires Schine to dispose of the Strand Theater in Cumberland, and that is up for disposition when we have a hearing on our petition to have a trustee appointed to sell that and the other eight or ten interests which are undisposed of in accordance with the order.

The Court: Suppose they can't sell them, what would you do then?

Mr. Wright: They were given a year's opportunity to sell them themselves. They could not do it. There have been [fol. 435] numerous offers since their report was filed, to try and buy those theaters from them, and they refused to negotiate because they said it was up to the Court. We say they can be sold if the Court will appoint a trustee to take possession and sell them. That is what ought to be done.

Mr. Goodwin: Coming back to this case, your Honor, there is nothing that counsel has elicited from the witness that he did not know all the time. There has been, according to the testimony of this witness, no possibility; they have been unable to find any purchaser for this theater——

The Court: There is a letter here.

Mr. Goodwin: Just a minute, your Honor. After this contract has been entered into subject to the approval of the Court, after they have said they would not make any objection if it is satisfactory to you, now they attempt to say "We have gone out and we have found somebody to operate the theater," he being advised and the Assistant Attorney General being advised of the situation, and having approved in advance, so far as that is concerned, with [fol. 436] full knowledge about the competitive situation.

The Court: What is this Fisher letter? What does it say about that? When was her offer made? You spoke about her having made an offer.

Mr. Wright: This is a letter from Richard L. Schuette, Manager of her theater.

"In the absence of Mrs. Grace M. Fisher from her theaters for a few days, I am taking the liberty of answering your letters to the Maryland and Embassy Theaters as of March 14th. Negotiations are now under way for Mrs. Fisher to purchase the Liberty Theater, and the owner already has her check for $5,000 covering the option. Knowing that the Liberty Theater was to be sold, this step was taken by her to protect her present businesses, as the purchase by some Schine house would definitely impair her booking facilities. The purchase of the Liberty Theater by the Schine Chain Theaters is the very action she is trying to protect herself against. Your letters, together with a copy of this letter, has been forwarded to her, and if there [fol. 437] is anything further she can do to clarify this matter, she will be only too glad to hear from you. Yours very truly, Richard L. Schuette, Manager."

The Court: She said she deposited $5,000?

Mr. Wright: That is what she said. I assume that is with the agent who had the option, although she does not give the name here. He also called me on the phone and wanted to know if they should come up here at this time, and I told them that our position would be that the matter should not

be disposed of now, but should be continued until after our petition had been disposed of for the appointment of a trustee.

Of course, the whole purpose of giving notice of acquisition and having a hearing, that was set up by this order of procedure, was so that the Court could be fully informed by all the parties that had an interest in the matter as to the effect of the acquisition and hear any objections that might be made, and I think these people should have an opportunity to be present and give your Honor whatever the facts may be with respect to another offer or the effect, [fol. 438] the adverse effect they allege Schine's acquisition of the other theater would have on the town.

The Court: You say your agreement with the real estate man was they were to have all ofer $130,000?

The Witness: Yes, sir.

The Court: Anything further?

Mr. Wright: We have nothing further.

Mr. Goodwin: Are you finished?

Mr. Wright: Yes.

Redirect examination.

By Mr. Goodwin:

Q. Are negotiations under way between you and Mrs. Fisher for the sale of this theater?

A. No, sir.

Q. Has she ever made you an offer?

A. No, sir.

Q. Has she ever sent you a check for $5,000 or any sum of money?

A. No, sir.

Q. Was there anything in this situation that you concealed from the Department?

A. No, sir.

Q. You say you first took this up with the Department——

[fol. 439] The Court: We have been over that.

The Witness: I just don't recall the dates. It was prior to this contract.

Q. You mean it was in February or some such time when you saw them?

A. Yes.

Mr. Wright: If the Court please, the question can't be resolved by any amount of conversation that might have passed between Mr. Burke and myself and Mr. Clark. The Court has the duty in any event, as I see it, to determine what the facts are.

The Court: I think we have gone over this matter thoroughly. If there is anything new, you can develop it. If there is any new matter, go ahead.

Mr. Goodwin: Yes, your Honor.

The Court: You have inquired about these matters before.

By Mr. Goodwin:

Q. Just on redirect, was any specific objection ever made by the Department of Justice to the sale of this theater to the Schines until today?

A. No, sir.

Q. None at all?

A. Not to me.

Q. Did you keep the Department fully advised in regard [fol. 440] to all this matter that has been brought up on cross-examination with reference to the competitive situation, so-called, and the sale of pictures by Warner Brothers and others to the Schines? Were they familiar with all that?

A. I think so.

Mr. Goodwin: I just want to locate a document here, your Honor, and I will conclude with the witness.

The Court: Do you know how much your real estate agents get out of this sale?

The Witness: According to the sale, they would get about $10,000.

The Court: How do you figure that, that they would get about $10,000.

The Witness: My price was $130,000, and they sell it for $140,000.

The Court: Were you ever advised of any offer made by Mrs. Fisher?

The Witness: No, sir.

The Court: To them, I mean?

The Witness: Not until today. She had plenty of opportunities. She never made any offer until after I had contracted with Schine, subject to the Court.

Mr. Goodwin: May the witness step aside, and I will put [fol. 441] on another witness. I will recall him again.

Mr. Wright: I would like to examine him on that last statement about the absence of objections.

Recross-examination.

By Mr. Wright:

Q. Mr. Burke, is it not a fact that I told you that we would very definitely oppose any sale of your theater to Schine unless it appeared that a sale to Schine was the only way in which you could realize anything on your investment?

A. That was my statement to you, yes, sir, and you said that you did not want to stand in the way, and you would do anything you could for me and would not object if the Court granted the permission.

Q. I don't think you quite understood the question. Read the question back.

(Question read.)

The Witness: I don't recollect that. I know I recollect telling you that they were the only ones that made me an offer that would let me out and give me some money.

Q. Don't you recall my telling you that we would oppose a sale to them if it appeared that it could be sold to any one else and yield you the same amount?

[fol. 442] A. I would not say yes or not to that, I don't recollect.

Q. Don't you remember?

A. No, sir, I don't, Mr. Wright. You may have said it. I don't remember.

Mr. Wright: I might say, your Honor, if there is going to be any point made about this question of acquiescence, that Schine and his counsel have never obtained any agreement from us with respect to this acquisition. In fact, they tried to get it and it was denied last fall.

The Court: You have this letter.

Mr. Wright: That was a letter to Mr. Burke.

The Court: You knew they were attempting to sell to Schine.

Mr. Wright: But, I say, we have never given Schine any assurance whatsoever with respect to this particular transaction.

The Court: What difference does it make whether you gave it to Schine or to Burke. You gave Burke the right to sell.

Mr. Wright: Mr. Burke is not the one asking the approval. Schine is the one who will have to get approval of the Court and make the showing. Schine certainly is not relieved of the necessity of making proper showing by any effort we [fol. 443] have made to assist Mr. Burke.

The Court: Burke wanted to sell.

Mr. Wright: That is right, but I take it that Schine, in order to make a proper case for exception from the order has to show more than that. They have to show that acquisition will not have an adverse effect on competition. That is what the order contemplates, that they shall satisfy the Court in that respect before any approval is given.

The Court: Well, that is true.

Mr. Goodwin: You are telling what you will testify to in case——

Mr. Wright: I don't propose to testify at all.

Mr. Goodwin: You were testifying all afternoon.

The Court: No. Call your next witness, if you have one.

[fol. 444] JOSEPH M. NAUGHTON, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Goodwin:

Q. Mr. Naughton, what is your name?

A. Joseph M. Naughton.

Q. What is your occupation?

A. Vice President of the Second National Bank of Cumberland.

Q. Does the Second National Bank of Cumberland own the second mortgage?

A. Yes, sir.

Q. What efforts did you make to secure the payment of that mortgage? In the first place, did the bank refuse to renew Mr. Burke's notes?

A. May I go back to the beginning?

Q. Yes, I think if you will, just tell the Court.

A. Loans to Mr. Burke had been on the bank books for a great many years, upwards of ten or fifteen years. The Comptroller of the currency in its regular examination of the bank had severely criticised the bank and demanded that steps be taken to improve its loan to Thomas H. Burke, and in its examination conducted in the late summer of [fol. 445] 1942, the Comptroller of currency through his Examiners demanded that there be no further delay, and that decisive action be taken either to improve the security and to bring it within the national bank statutes and the regulations of the Comptroller's office, or to collect the loan in full by liquidation of the collateral, if necessary, and it was as a result of those peremptory orders from the Comptroller of the currency that the bank, through me discussed with Mr. Burke what could be done, either to improve the collateral back of his loan or to pay the loan in full.

It was probably in December of 1942, or in January of 1943, that Mr. Burke agreed with the bank to a sale of the theater as the only way in which he could comply with these demands. As a consequence of that agreement, that he would sell the theater so as to clear up this debtor position of his to the bank, that the bank endeavored to arrange for a possible buyer to communicate with Mr. Burke. As a result of those efforts on the part of the bank, which extended over the first half of 1943, the bank brought to Mr. Burke, or I possibly should say to his attention, one specific offer that would have paid only the first mortgage bond issued against the theater, and the, at that time, accrued taxes and other charges that took priority over the lien of [fol. 446] the bank, but without advising one way or the other as to what the reaction might be to that particular offer. That offer was not in writing, nor was it accompanied by any proffer of cash. Some time later on as a result of the bank's efforts, the bank received an offer to sell either its collateral or the notes of Mr. Burke that it had, but the bank from the beginning has endeavored to obtain for Mr. Burke as much as it possibly could in the way of an equity over and above these various liens and charges, and although to my knowledge that particular proposal, that it

sell by assignment either its collateral or its notes to this particular prospect is still open. It has never been either accepted or rejected by the bank.

The Court: That is just to sell the collateral?

The Witness: That is all.

The Court: Notes?

The Witness: Yes, sir.

The Court: No agreement to extend the notes?

The Witness: The notes were all on a monthly basis, your Honor, and all this time the notes were being renewed, and they were accompanied at each monthly renewal by a proffer of principal payments which would have liquidated the notes in approximately—I should say would [fol. 447] liquidate the total indebtedness of Mr. Burke to the bank in approximately 35 to 40 years, a rate of curtailment which we knew would not be acceptable to the Comptroller of the currency.

Q. You were in constant touch with Mr. Burke about this situation during this time?

A. All that time, yes, sir.

Q. You conversed with him from time to time?

A. Yes, sir.

Q. Will you tell the Court, whether, in your judgment, every possible effort was made by Mr. Burke and by the bank to obtain a satisfactory purchaser of this theater outside of the Schines?

A. I am convinced both Mr. Burke and the bank made such efforts.

Q. Constantly during the period of a year?

A. Yes, sir.

Q. Or more?

A. Yes, sir.

Q. Do you know a Mrs. Fisher?

A. I do.

Q. What is Mrs. Fisher's name, please, if you know?

A. Grace Fisher. Mrs. Grace Fisher.

Q. Is she the owner of a theater in Cumberland?

[fol. 448] A. She is the owner of the capital stock and of the outstanding bonds of a corporation which owns the property on which there is located the Maryland Theater.

Q. The Maryland Theater of Cumberland?

A. Yes, sir.

The Court: There is some testimony here that she also owns another theater.

The Witness: Your Honor, she is the tenant under lease of a theater known as the Embassy.

Q. That is only one. There is another that she owns the capital stock.

A. The Maryland and the Embassy, sir.

Q. The Embassy and the Maryland Theaters?

A. Yes, sir.

Q. One she owns under lease, and the other she owns—well, she is the stockholder of the corporation?

A. Yes.

Q. And owns the bonds of the corporation that owns the theater?

A. Yes.

Q. Have you had any conversation with her in regard to the Schine Theater?

A. No, sir.

Q. I mean the Liberty Theater?

A. One conversation.

[fol. 449] Q. When was that?

A. Either in late January or early February of this year.

Q. She was in Cumberland at that time?

A. Yes, sir.

Q. What was the purport of that conversation?

A. At that time Mrs. Fisher said to me that she had been approached by the two men to whom Mr. Burke had given an option to sell the Liberty Theater, that she had been approached by them for the purpose of interesting her in the acquisition of the Liberty Theater, and in her statement to them, she stated that she was not so interested because of her health and age and marital situation, and that although she wanted us to know about it—giving the impression she was asking the opinion of the bank—she merely stated to me that she was not interested in acquiring the Liberty Theater.

Q. That you say was in January or February of this year?

A. Early February of this year.

Mr. Goodwin: You may inquire.

Cross-examination.

By Mr. Wright:

Q. You say you and Mr. Burke did make an effort to find other purchasers than Schine for this theater?

A. Yes, sir.

[fol. 450] Q. Is that correct?

A. Yes, sir.

Q. Why did you do that?

A. To collect our loan.

Q. I mean, why did you feel it necessary to make a special effort to find other purchasers than Schine?

A. We did not start out to find other purchasers than Schine. We started out to find a purchaser for the theater who would by buying the theater liquidate our loan and give Mr. Burke as much as he possibly could acquire in the way of equity over and above all loans.

Q. One reason you made that effort, was it not, was because you had been told by me we would rather see that theater bought by any one else than Schine, was it not?

A. I recall no such statement made by you to me.

Q. Do you recall talking to me?

A. I do.

Q. What was the conversation you had with me?

A. The conversation was an outcome of my statement to you that apparently no other individual or group or corporation than the Schine Circuit was interested in paying a price for the theater which would enable us to pay our loan in full and give Mr. Burke something.

Q. How did you happen to say that? Did you just come in and say that out of a clear sky?

[fol. 451] A. No, sir.

Q. It was in response to my inquiries from you as to what had been done to find another purchaser for the theater, was it not?

A. No, sir, it was not.

Q. How did you happen to say it? What did I say?

A. I came to you, sir, because I had been told that no such transaction could be completed without the approval of the Department of Justice.

Q. Yes, that is right, and what did I tell you?

A. You told me to come back in 90 days, and that you hoped by that time analogous or parallel action to the consent decree that you had acquired in this court would have

been terminated, as I recall it, and that at that time you would be in a position to talk to me.

Q. Did you ever come back?

A. I did not, sir.

Mr. Wright: That is all.

Mr. Goodwin: That is all.

[fol. 452] JOHN A. MAY, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Goodwin:

Q. Will you state your name?

A. John A. May.

Q. Your address?

A. Gloversville, New York.

Q. Your occupation?

A. Comptroller of the Schine Chain Theaters.

Q. When were you approached by any one representing the Liberty Theater with reference to this purchase or possible purchase by the Schine defendants here?

A. Something over a year ago.

Q. Will you tell the Court about those negotiations, if you recall, when they were?

A. There was first a conference with Mr. Naughton in New York. He explained to me the banking situation, and I told him that I sympathized with his problems at the bank, but we were not going to enter into any negotiations with him or Mr. Burke until they got permission from the Department of Justice for us to continue such negotiations. [fol. 453] I heard nothing further from Mr. Naughton until along in the fall, and then Mr. Mellison and Mr. Blaul called me up on various occasions, and I gave them the same answer. Things drifted along until somewhere about the middle of February, and I think it was Mr. Naughton called up and said that something has got to be done to bring the Burke indebtedness to the bank to a head, and he said "Mr. Mellison is going to call you." Mr. Mellison did call me and I told him I would not even discuss the proposition with him, that it was entirely Mr. Burke's problem. If Mr.

Burke could show me a letter from the Department of Justice permitting him to negotiate with us, I would be very glad to negotiate with him. On, I think it was, the 27th or 28th of February, Mr. Mellison called me and said they had such permission from the Department of Justice, when could I meet Mr. Burke in Washington. I met Mr. Burke and Mr. Naughton in Washington March 1st, at which time we drew up the contract, and Mr. Burke showed me the letters which he had written to Mr. Clark; then, in response —two or three days later, rather, Mr. Burke—I think it was Mr. Burke or Mr. Mellison—telephoned me that they had a letter from Mr. Clark, which Mr. Burke had told me—that he had the letter which he had previously told me was coming through, and I met Mr. Burke in Washington on, I think [fol. 454] it was, March 7th, the following Monday, and with Judge Goodwin went to see Mr. Clark.

Q. Did you ever bring any pressure to bear on Mr. Burke to compel him to sell this theater to the Schines?

A. No, sir.

Q. Contracts with different film producers were all in the regular course of business?

A. I had nothing to do with the purchasing of films.

Q. You have nothing to do with that?

A. No.

Q. You know Mrs. Fisher?

A. I do.

Q. Did Mrs. Fisher know anything in regard to these negotiations in regard to the sale of this theater?

A. I don't know. I understand that in the last few days she has shown some interest in it.

Q. What is that?

A. I say that I understand in the last few days she has shown some interest it it.

Q. Did she show any interest in selling her theater to you?

A. She did.

Q. You are familiar with the signature of Grace M. Fisher?

A. I am.

This is the letter addressed to you February 28th, 1944?

A. Yes, sir.

[fol. 455] Q. And do you know how she came to write you that letter?

A. No, I do not. We have not heard from her in some time.

Q. You had seen her from time to time?

A. Not for a year or more.

Q. Had she ever made any suggestion in regard to the sale of her theater to you?

A. Yes, for a matter of two or three years we negotiated off and on.

Q. In other words, this lady who now writes a letter, or whose manager now writes a letter saying that she would like to buy this theater has for a number of years attempted to sell her theater to you?

A. Yes.

Q. Is that correct?

A. Yes.

Mr. Goodwin: I would like to read this into evidence, your Honor, in view of the fact that he has made statements in regard to the desire of Mrs. Fisher to bid or buy this theater.

Mr. Wright: I don't have any objection to his reading the letter. I assume Mrs. Fisher will have an opportunity to testify about these matters herself.

Mr. Goodwin: Do you want to look at this?

Mr. Wright: No.

[fol. 456] The Court: Oh, yes, she will have an opportunity.

Mr. Goodwin: "Grace M. Fisher, Theaters, Cumberland, Maryland, General Manager, Grace M. Fisher. The date of the letter is February 25th, 1944.

"Dear Mr. May: A lot of water has gone over the dam since I last talked with you, and so I am wondering what Mr. Meyer Schine had in mind when he asked me to get in touch with him as soon as the trial of the Sussman was over. I did not write him or call him because of the fact that they entered a damage suit against me, then changed their mind, and took the case to the Court of Appeals, and since Judge Sloan, who decided the case in Cumberland, also sits on the Court of Appeals at Annapolis, I don't think they will get very far in reopening their case. However, this trouble has not discouraged me with the idea of leasing or selling. The help problem has been most difficult, and my hours are from 9 a. m. to 10 p. m., and every Sunday. After all, a woman who has put in as many years at this business deserves a vacation, and the only way I can get

the kind of a vacation I want and need is to stop for a [fol. 457] while and take it easy. That is why I am still willing to put my theaters in good hands, and I consider your Company the people to have them, since you already have a theater in our town. I would like to hear from you, just what position you are in, in regard to leasing or buying, and I will very much appreciate hearing from you in the very near future. With kindest regards, I am."

As I have read it in the record, it is not necessary for me to introduce it in evidence.

By Mr. Goodwin:

Q. Did you at any time know of any attempt on the part of Mrs. Fisher to buy the Liberty Theater?

A. I did not.

Q. Had you any other communications from her recently?

A. Mr. Schine had, yes, in the office.

Q. Have you a copy of that?

A. I think I gave it to you, Judge.

Q. Will you read that to the Court?

A. Letter addressed to J. Meyer Schine, Gloversville, New York, dated Miami, Florida, March 15th, 1944.

"Dear Mr. Schine: You will no doubt be surprised to hear from me from Florida, but I had a chance to take a [fol. 458] few days' vacation and so arrived here yesterday. My office phoned me today, the letter from the Department of Justice had advised me that you were buying the Liberty Theater in Cumberland and had asked if sale of the same would affect my business in any way.

"I did not tell you when you phoned me last week that I had made an offer to Mr. Burke for the theater with a check for $5,000 attached. My reason for doing so was that the Warner Brothers had a relative in Cumberland trying to buy me out, and also making an effort to get the Liberty Theater. I made Mr. Burke the offer to protect myself as well as to protect you, in the event that we at some future time may be able to get together on a deal for my houses.

"I had fully intended to write you about this matter, as I could not talk freely with the office employee at present, but in the rush to get away I neglected to do so.

"If you have any trouble in making a deal for the Liberty Theater, I will go ahead with my deal, and at the proper

time turn the three houses over to you, but I did not want to see another chain come in. If you want to get in touch with me quickly regarding this matter, my telephone number here is 3-1320 Miami. Address, 241 Southwest 22nd Avenue. [fol. 459] Will arrive back in Cumberland March 25th or 26th. With kindest regards, Grace N. Fisher."

Mr. Goodwin: We will put this in evidence, your Honor, so that you might have everything before you that relates to Mrs. Fisher and her supposed offer which she refers to here.

Q. The reference is to the Warner Brothers?

The Court: Yes, so he stated.

The Witness: Warner Brothers.

Q. That she did not want them to acquire the theater. Who are the Warner Brothers?

A. They operate theaters throughout the country and produce pictures.

Q. Are the Warner Brothers of the Big Five?

A. Yes.

Q. They are one of the privileged few who may go in and purchase——

Mr. Wright: I object to that, argument.

Mr. Goodwin: All right.

Q. They are one of those who answered the consent decree who may buy theaters without any court order, is that right?

Mr. Wright: If you are making a speech, I would suggest you make it, and not put it in the form of a question.

[fol. 460] The Court: We understand that.

Q. That is true, is it not? They are one of those who may purchase theaters under their consent decree without coming into court?

Mr. Wright: As far as we are concerned, we would oppose any acquisition of that theater by Warner far more strenuously than by Schine or any one else.

Mr. Goodwin: How would you have anything to do with it?

The Court: Just a moment. We are just cluttering up the record.

Mr. Wright: If there was to be any attempt to show Warner negotiations, I think it should have been done while

these gentlemen were on the stand, so it would be clearly made to appear that there were none such.

The Court: You can recall him, if you want to.

Mr. Goodwin: Have you got a copy of your consent decree in that other case?

Mr. Wright: No, I have not.

The Court: I don't see what that has to do with this.

Mr. Goodwin: I believe I have one available here.

The Court: Whether they are preferred or whether they are not has no materiality here. The consent decree speaks [fol. 461] for itself. The question that you put to the witness is entirely immaterial.

Mr. Goodwin: Well, then I will withdraw it. Any cross-examination.

Cross-examination.

By Mr. Wright:

Q. Do you know what it was Mr. Meyer Schine had in mind the last time he talked to Mr. Burke, referred to in the first paragraph here?

A. Yes, that was the lawsuit with Sussman.

Q. It was over the acquisition of Mrs. Fisher's theater, is that right?

A. We have not negotiated with Mrs. Fisher in two years and a half.

Q. I take it you had negotiated——

A. Oh, yes.

Q. His interest in the Sussman lawsuit is only in relation to his interest in acquiring Mrs. Fisher's theaters, isn't that right?

A. No, two or three years ago we negotiated with Mrs. Fisher. Then we dropped negotiations, and she negotiated with Sussman, which culminated in this lawsuit.

Q. As far as you are concerned, the acquisition of this Liberty Theater will, I take it, shortly be followed, if you [fol. 462] can arrange it, by the acquisition of Mrs. Fisher's Maryland Theater, isn't that right?

A. Not necessarily.

Q. Not necessarily, of course, but that is the kind of a situation you would like to have in Cumberland, is it not?

A. No, not necessarily.

Q. You would not want to own all three first run theaters there, is that right?

A. Not at her price.

Q. At your price, of course?

A. No.

Q. Answer my question. Do you want all the three first run theaters in Cumberland?

A. No.

Q. You do not?

A. No.

Q. You would have no objection if in the order that was—if in any order that was entered in this case permitting you to acquire the Liberty, you were flatly prohibited from acquiring any further theater interests in Cumberland? You would have no objection to that privilege?

A. If there was any justice in such a stipulation.

Q. Just answer my question.

A. I don't know why any such stipulation should be put into it.

[fol. 463] Q. Can't you answer the question?

A. We might or we might not, depending on circumstances. Whether we have two theaters or three theaters——

Q. You are familiar with the policy in your company in acquiring theaters, are you not? You have something to do with that policy?

A. Yes, sir.

Q. And that policy is, is it not, wherever you go into any situation, to secure control of it by getting control of all of the first run theaters, isn't that correct?

A. That is sometimes advisable from a business standpoint. It is not necessary.

Q. You found advisable and have actually achieved that result in 75 per cent or 80 per cent of the situations in which you operate theaters, isn't that true?

A. Possibly, yes.

Q. Well, it is true, is it not?

A. Yes.

Q. If your acquisition and policy in Cumberland follows the course that your acquisition and policy has previously followed in other situations, you will wind up in possession of all of the first run theaters there, isn't that correct?

A. Barely possible.

Q. It is not only possible, it is quite probable, is it not?

[fol. 464] A. Well, it is not necessarily so.

Q. You regard that a desirable situation from Schine's standpoint, do you not, to control all the first run theaters in the town?

A. Yes.

Q. That acquisition and control over film rental and admission prices, you would not otherwise have?

A. It does not give us any control over film rentals at all.

Q. Just over admission prices?

A. The public control the admission prices.

Q. That is, you don't think it makes any difference whether there is any competition in the town or not, then, as far as the public is concerned, is that right?

A. The chief advantages are economy of operation and advertising.

Q. As far as you are concerned, there is no public advantage in competition in any situation, is that right?

A. I would not say so, no. Competition sometimes is desirable in some lines of business.

Q. As far as Schine is concerned, it is more desirable to have a monopoly, is it not?

A. Not necessarily.

Q. The fact that you have achieved those monopolies in 75 per cent of your situations you say you regard as purely accidental?

[fol. 465] A. It depends upon your definition of what "monopoly" is.

Q. I wish you would answer my question.

A. I don't like the word "monopoly".

Q. Well, whether you call it a monopoly or whether you call it a closed town or use any other name that you like for it, it has been a definite policy of Schine's has it not, to acquire all of the first run theaters in any particular community in which Schine enters?

A. Yes, sir.

Mr. Wright: That is all.

The Court: Next witness.

Mr. Wright: I would like to recall this gentleman for the purpose of seeing whether there is anything in the story about Warner negotiations. If there have been such negotiations we would very much like to know it, so I would like to call them each for that question.

[fol. 466] THOMAS H. BURKE, a witness recalled by and on behalf of the Defendants, having been previously sworn, was examined and testified further as follows:

Cross-examination (continued).

By Mr. Wright:

Q. Have you ever had any negotiations with Warner Brothers with reference to the purchase of your theater?

A. No, sir.

Q. Have you with any other film distributor?

A. No, sir.

Q. Or chain other than Schine?

A. No, sir.

Mr. Wright: That is all.

Mr. Goodwin: I just wish to summarize. Did you make every possible effort to dispose of this theater to an independent dealer or any one else prior to the first of March, 1944?

Mr. Wright: If the Court please, he has already testified that he gave this option to these other people in December.

The Court: Your question is improper in form. He should be asked to state what he has done. When you ask [fol. 467] him if he has done everything possible, that is really a conclusion of his own mind. We have been all over this, anyway.

Mr. Wright: It seems to me it is perfectly clear what he did. He did give this option to these people, and what they did is something only they can testify to.

The Court: If there is anything further that he has done that he has not stated, he may state it now.

Redirect examination.

By Mr. Goodwin:

Q. You have given the Court the benefit of all you know in regard to the negotiations that were carried on with reference to this theater?

A. Yes.

Q. You had not been able to dispose of it to any one except Schine?

A. Nobody has made me any offer except Schines.

Q. Mrs. Fisher said she had made you an offer and sent a check for $5,000?

A. Not to me. No knowledge of it.

Q. You have no knowledge of anything of that kind?

A. No, sir.

[fol. 468] The Court: He stated so before.

The Witness: She has never given me any—no check nor money. Never even talked to me about it.

The Court: Sent to the agents, evidently.

Q. She is now in Florida?

A. She may have done that, but they did not tell me she did.

Q. No one has ever informed you——

The Court: He said so several times. Do you want to call Mr. Naughton?

JOSEPH M. NAUGHTON, a witness recalled by and on behalf of the Defendants, having been previously sworn, was examined and testified further as follows:

Cross-examination (continued).

By Mr. Wright:

Q. Mr. Naughton, did you ever have any negotiations with Warner Brothers with respect to the Liberty Theater at Cumberland?

A. I had written and telephone correspondence with Warner Brothers.

Q. What was the nature of that correspondence?

A. It was in line with my previous testimony, that Mr. [fol. 469] Burke agreed that the bank—that the best interest of the bank and himself could be furthered by a sale of the theater. Warner Brothers were one of the parties to whom I wrote a letter, exploratory letter.

Q. What response did you get from them?

A. That they were not interested at that time.

Q. Hear anything further from them?

A. That was approximately a year ago. No, sir.

The Court: Did you say you sent letters to others besides Warner?

The Witness: I wrote to between 15 and 20 possible buyers of theaters.

The Court: You got no offers at all?

The Witness: None other than what I testified to earlier, one of which was for approximately the amount of the first mortgage bond issue. The other was for the amount of our collateral, and the third was the Schine group.

Mr. Wright: That is all.

Mr. Goodwin: May it please the Court, so far as the evidence introduced here is concerned, it appears that Mr. Burke and Mr. Naughton had made every effort to find some purchaser outside of Schine. Now, the only evidence offered here is a letter to the Department of Justice saying that [fol. 470] Mrs. Fisher, from Mrs. Fisher or from her manager, saying that she had made an offer. Mr. Burke says he never has received such an offer and so far as he knows no such offer was ever made, and no check was ever submitted to him. It further appears from a letter that was received by Mr. Schine from Mrs. Fisher that she had no intention of acquiring this theater for h-rself.

The Court: Just wait a moment. Do you want to introduce some evidence?

Mr. Wright: If the Court please, I don't think any disposition of the matter should be made until these people who operate the theaters have an opportunity to testify here and be heard. That is my feeling. Your Honor should hear from Mrs. Fisher and from the other operator who has objected before any decision is made in the matter.

The Court: I think they ought to be permitted to put in what evidence they have, if any, on this question.

Mr. Goodwin: You think what?

The Court: I think they should be permitted to adduce whatever evidence they can. Counsel has some witnesses [fol. 471] he wants to call.

Mr. Goodwin: I would regard Judge Knight's opinion as more or less conclusive on that proposition. If your Honor says so, I must, of course, bow to that.

The Court: I think it is the only way to handle the matter.

Mr. Goodwin: They have had plenty of time to bring in their witness, to introduce their evidence. They had not only ten days' notice, but they had known about this for a long time. If they had any reason, they should have told me. I wrote to ask them whether they had objection, and if they had objections, what the grounds were, what evidence did they intend to offer, and I have received no reply

to that letter whatever. We come here, we put Mr. Burke on the stand and we show that he has made every effort to dispose of it to some one else, and those efforts have not been successful. Mr. Naughton is interested on account of the interest of the bank, and he testifies to the same thing.

The Court: It may be there may not be any other witnesses. They may not call anybody, but they should have [fol. 472] an opportunity to do so, if they have any witnesses. When do you want to adjourn this to?

Mr. Wright: Counsel suggested April 10th, and I think if we could have the hearing in our petition set for April 10th at the same time, it would be a convenience to us, so that we could finish up this matter and also have the hearing on the petition to appoint the trustee.

The Court: He has not made a reply.

Mr. Wright: His reply will be in on the 3rd.

The Court: Oh.

Mr. Wright: It will be before the 10th.

The Court: I think the whole three motions should be brought on together.

Mr. Wright: That is my opinion.

Mr. Goodwin: Yes, your Honor. I believe whether we get through with the other matters or not on the 10th, when we come in on the 10th, we ought to dispose of this.

The Court: At least we can see what we can do on the 10th, go ahead and make some proof on the petition probably. Your reply is due on the 3rd.

Mr. Goodwin: Our reply to their petition is—our answer to their petition is due on the 5th.

[fol. 473-475] Mr. Wright: In either event, it is before the 10th. We will have it before the 10th in any event.

The Court: We will hold all matters until the 10th and go as far as we can at that time. You have a motion to——

Mr. Goodwin: We have a motion to dismiss.

The Court: That is an integral part of the other proceedings. They are moving to make the injunction permanent, and you are moving to dismiss.

Mr. Goodwin: In its regular order, that is the first thing to be disposed of.

Mr. Wright: We have no objection to this being heard on his motion on the 10th. As far as we are concerned, it will take 15 minutes to dispose of that.

The Court: Your motion and his motion are really entwined, you might say.

Mr. Wright: That is, of course, if the suit is to be dismissed, we can't enforce the order. There is no question about that.

The Court: We will hold everything until the 10th of April, then.

Mr. Goodwin: At 10 o'clock?

The Court: 11 o'clock.

(Whereupon, an adjournment was taken until April 10th, 1944, at 11 o'clock, a. m.)

[fol. 476] IN UNITED STATES DISTRICT COURT

[Title omitted]

Transcript of Hearing

Proceedings before Honorable John Knight, United States District Judge for the Western District of New York, April 10, 1944, at 12 o'clock noon.

APPEARANCES:

Honorable George L. Grobe, United States Attorney for the Western District of New York, by Robert L. Wright, Esq., Special Assistant to the Attorney General.

Messrs. Goodwin, Rosenbaum & Meacham, Shoreham Building, Washington, D. C., by Clarence N. Goodwin, Esq., and

A. E. Robert Friedman, Esq., 40 Wall Street, New York, N. Y., and

Edwin McCarthy, Esq., 70 Pine Street, New York, N. Y., appearing for the defendants.

[fol. 477] PROCEEDINGS

GRACE M. FISHER, a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Will you please state your address, Mrs. Fisher?
A. The business or my residence?
Q. Yes, where do you live?
A. 833 Gephart Drive, Cumberland, Maryland.
Q. What is your business?
A. I operate the Maryla .d and Embassy Theaters.
Q. At Cumberland?
A. Cumberland.
Q. What is the name of the Manager of your theaters there?
A. I really have no Manager. I have an advertising man, Richard Schuette.
Q. He works for you there in the capacity of advertising manager?
A. Yes.

Mr. Wright: I have a letter here dated March 15th, 1944, from Mr. Richard Schuette to the Attorney General, which [fol. 478] I ask to have marked as Plaintiff's Exhibit 1 for identification.

(Thereupon letter dated March 15, 1944, from Mr. Richard Schuette to the Attorney General, referred to, was marked as Plaintiff's Exhibit No. 1 for identification.)

By Mr. Wright:
Q. Would you examine that Plaintiff's Exhibit 1?
A. Yes, we have a copy of it. Mr. Schuette wrote this letter in my absence in Florida.
Q. That is Mr. Schuette's signature on the letter?
A. Yes.
Q. He wrote that while you were in Florida?
A. That is right.
Mr. Wright: I offer this.
Mr. Friedman: Objected to, if your Honor please. First of all, there is no testimony that this man was authorized

by the lady who is testifying to write that letter or to bind her in any way whatsoever,

The Court: She just testified.

Mr. Friedman: No, she merely identified his signature and stated she was absent in Florida when it was written.

The Court: Objection sustained.

Mr. Wright: If the Court please, perhaps I had better [fol. 479] read the letter, then I think the purpose for which——

Mr. Friedman: If your Honor please, I object to the reading of the letter.

Mr. Wright: The fact is apparent that the letter was written while she was absent from the theater. I do not dispute that at all.

The Court: There should be, at least, some proof of his authority to send the letter.

By Mr. Wright:

Q. I take it, Mr. Schuette was acting as manager of the theaters in your absence, is that right?

Mr. Friedman: If your Honor please, I object. The witness has testified Mr. Schuette was not her manager, but was employed in an advertising capacity. She said she had no manager.

Mr. Wright: Let the witness give the testimony on that point.

Mr. Friedman: You are trying to lead the witness.

Mr. Wright: I just asked the question.

The Court: It seems to me, in order to have any legal effect, you must show this letter was written with her authority. If somebody wrote some letter referring to the purchase of the theater, if she did not authorize that, it [fol. 480] would not have any force here.

Mr. Wright: I think if Mr. Schuette was the man in charge of the theaters at the time the letter was written, it is perfectly competent.

The Court: Let me see it.

Mr. Friedman: There is no testimony that he was in charge. The lady denied that he was the manager.

Mr. Wright: The lady had not had an opportunity to answer the question.

The Court: I will exclude it at this time.

Mr. Wright: I take it your Honor is not excluding it until we have exhausted the testimony on this particular point. I have not gotten an answer to my last question.

The Court: It would be hearsay, as to what somebody else was going to do.

(Last question read.)

Mr. Friedman: She testified before he was not.

The Court: Suppose she did, she might contradict herself.

Mr. Wright: You have already suggested the answer you want.

The Court: What did she answer?

(The question had not been answered.)

The Court: Read the question so you can understand it [fol. 481] fully.

(Question re-read).

The Court: It is leading, anyway.

Mr. Friedman: I object to the leading question.

The Court: Ask her who, if anybody, was manager of the theaters while she was absent.

By Mr. Wright:

Q. Who, if anybody, was manager of the theaters while you were absent?

A. It was necessary for me to be away for a week. Mr. Schuette was with me five years, but I never left him in charge before. So, I paid all checks, everything in advance, prior to going away, and left instructions with him and his wife also that it would not be necessary for him to open any mail except National Screen people, and Highway Express people. I did not know what the checks would be for them, because they varied week to week. He took it upon himself to open the mail, even personal mail, and went ahead and acted on his own initiative. He thought——

The Court: You can't tell what he thought.

The Witness: The boy is heart broken about it, because he thought he was doing the right thing.

By Mr. Wright:

Q. In any event, there wasn't any one else, was there, who [fol. 482] was in charge of your theaters other than Mr. Schuette while you were gone, is that right?

A. That is right.

Mr. Friedman: I object to that question.

The Court: I will let that stand. She stated she told him not to open any of the mail except specific mail. He was not authorized.

By Mr. Wright:

Q. When was it you went to Florida?

A. 14th—I left on the 13th.

Q. 13th of March?

A. Yes.

Q. Had you had any discussion with Mr. Schuette before that time about the fact that Schine was seeking permission to acquire the Liberty Theater?

A. None whatsoever.

Q. At or about the time this letter of March 15th was written, did he communicate with you in Florida?

A. Yes, after he had taken action.

Q. By "action" you are referring to the writing of this letter, Plaintiff's Exhibit 1 for identification?

A. Yes.

Q. He called you then at Florida?

A. Yes, and told me all he had done and said he was acting, what he thought was the best. He said he saw the [fol. 483] letter from the Department of Justice and opened it, and saw what it was.

The Court: You have to speak louder.

Q. Try and speak more slowly and more distinctly.

Mr. Friedman: May we have the last answer read back?

(Last answer read.)

The Court: Letter from the Department?

Mr. Wright: This letter written in response to any inquiry.

By Mr. Wright:

Q. Did he read you this letter that he had written to the Department over the telephone?

A. No, he mailed me copies air mail.

Q. He sent you an air mail copy?

A. Yes.

Q. And told you over the phone what the substance of it was?

A. Yes, he told me.

Q. Then what, if any, instructions did you give him?

Mr. Friedman: If your Honor please, I object to that, any conversation relative to that letter after it was written. There is nothing in evidence to show it was authorized.

The Court: He is not asking about that now. He is asking what instructions she gave to this so-called manager after this letter was received. Go on, what instructions did [fol. 484] you give him after receiving this letter.

The Witness: Not to do anything further and I would be home immediately, which I did.

By Mr. Wright:

Q. When did you arrive in Cumberland?

A. Just eight days from the day I left. That would have been the 23rd——

The Court: You were gone eight days?

The Witness: Two days in going and——

Q. That would be about the 21st?

A. I left Miami Tuesday morning, I think it was the 21st or 22nd.

Q. He says in the second paragraph of the letter here "Negotiations are now under way for Mrs. Fisher to purchase the Liberty Theater, and the owner already has her check for $5,000 covering the option." Was that statement correct at the time it was made?

Mr. Friedman: I move to strike out the reading of a portion of that letter.

The Court: Do you object to it?

Mr. Friedman: Yes, sir.

The Court: Objection sustained. Let her state what arrangements were made, if any. You are quoting from a

[fol. 485] letter that purports to say something. She is here to testify.

By Mr. Wright:

Q. Tell us just what your negotiations were with reference to the Liberty Theater at Cumberland.

Mr. Friedman: I object to that. She did not say she had any negotiations.

Q. If any.

Mr. Friedman: All right.

The Witness: I did have. The Theater had been offered to me some time in January——

The Court: Which theater?

The Witness: Liberty Theater, and I did not want it.

The Court: In January it was?

The Witness: February. Mr. Mellinson and Mr. Blaul of Cumberland had an option to sell it. Then, on March 1st Mr. Mosner, cashier of the Second National Bank, saw me and told me he was sorry I had not made an offer for the Liberty, because a chain was coming in that could definitely hurt me, and he left me under the impression it was the chain that had hurt me once or twice, Warner Brothers. They kept me out of——

Q. Just a minute, Mrs. Fisher. Just confine yourself to what he actually told you.

[fol. 486] A. He said "It is too late now, but I am sorry you did not protect yourself."

Q. Did he give the name of any chain?

A. No.

Mr. Friedman: Your Honor, the question was asked of this witness to tell all about her negotiations. She ought to be permitted to tell.

The Court: He did not mention the word "Warner"?

The Witness: He did not mention anybody. I asked him specifically if it was the Schine Circuit. He said "No", but he said that he was not at liberty and could not tell me who it was, and then the next morning I made an offer and Mr. Blaul and Mr. Mellinson said it was too late, my offer was too late, that the deal was made.

By Mr. Wright:

Q. When was that?

A. March 2nd, but, however, they accepted the offer.

The Court: They what?

The Witness: They accepted the offer March 2nd.

Q. You made an offer on March 2nd. What was the offer?

A. The offer was $140,000, $130,000 to go to Mr. Burke, and $10,000 to the brokers.

Q. Did you at the same time make a cash deposition of any kind?

[fol. 487] A. Yes, I did.

Q. How much did you deposit?

A. A check for $5,000.

The Court: With the real estate man?

The Witness: Yes, with the real estate man.

Q. You say at first they told you it was too late, that they had an offer from somebody else?

A. And the deal was too near closed, but——

Q. Did they tell you who that was?

A. No.

Q. Did you ask them?

The Court: Why did you make an offer if the deal was closed?

The Witness: Because my bank had urged me, if there was any possible way to make it, they advised me to do it.

The Court: Why did you make an offer when it was too late?

The Witness: They said it was too late, but, however, they accepted the offer.

By Mr. Wright:

Q. Didn't they tell you the offer they had was subject to Court approval?

A. No, not at the time.

Q. When did they first tell you that?

[fol. 488] A. Well, when—I came down to Washington, and then I went over and asked them to withdraw my offer, when I learned it was the Schine Circuit, and they said then it was subject to Court approval, that they would give me back my offer, they would return it.

Q. Have they returned your check?

A. No, they certified it and kept it.

Q. When was it you first learned that the Schine Theater was the chain that was going to acquire the Liberty?

A. In the trade papers. I get the Daily every day. I saw it in the trade paper.

Q. That was when?

A. I don't remember the exact date, but it was a week ago Friday, week ago this past Friday.

Q. Are you sure it was not before that? Didn't Mr. Schuette, when he called you on the telephone to tell you about the communication from the Department, tell you what that was?

A. I don't think he did. I have the letter.

Q. You have seen the letter from the Department?

A. Yes.

Q. And the Department's letter that was sent to you referred specifically to Schine's request to acquire the Liberty Theater, did it not?

A. Yes, but that was much after March 2nd.

[fol. 489] Q. Yes, that was after March 2nd, but you learned of it on March 15th, at the time Mr. Schuette wrote the Department in your absence, isn't that right?

A. Yes, but the offer had been in then 15 days.

Q. I understand that, but I say, you did know at the time you talked to Mr. Schuette, while you were in Florida, that Schine was the chain that was coming in?

A. Yes.

Q. As I understand you, you say you then came to Washington and you talked to the representatives of the film exchanges in Washington?

A. Yes.

Q. Can you tell us what conversation you had with the film exchanges?

Mr. Friedman: If your Honor please, I don't see what bearing that has on this theater of Burke's.

The Court: I don't see that it has.

Mr. Friedman: I object to it.

Mr. Wright: I think it will appear if the conversations are stated.

The Court: Are you cross-examining the witness?

Mr. Wright: I think, if the Court please, she is actually here as the Court's witness on the question of the facts.

Mr. Friedman: If your Honor please, the Government issued a subpoena for this lady.

[fol. 490] Mr. Wright: Let me ask her another question.

By Mr. Wright:

Q. Mrs. Fisher, did the conversations that you had with the film exchanges in Washington have anything to do with your decision to withdraw your offer?

Mr. Friedman: I object to that, if your Honor please, as to what conversation——

The Court: Overruled. Did your conversation with the film exchanges have anything to do with your decision to withdraw your offer?

The Witness: Well, it did. They assured me I would always have the product the same as I had the last fourteen years. The only other two opposition had not affected my operation, the Liberty, or the Strand.

Q. By the "produet" you are referring to the feature films that you people first run in your Cumberland theaters, is that right?

Mr. Friedman: Again I object to leading the witness.

The Court: Yes, that is true.

Mr. Wright: I am just trying to shorten this up to some extent.

The Court: I know, but if objections are made, I have to pass on them.

Mr. Wright: If time is no object, I will be glad to phrase [fol. 491] each one of these questions——

The Court: Let her go ahead and testify without suggestion.

By Mr. Wright:

Q. Then, you say, as I understand you, after you had had this assurance that you have referred to from the film companies, that you would be allowed to retain your film product, you went back to Cumberland and talked to Mr. Blaul and told him you wanted to withdraw your offer?

A. That is right.

Q. However, you say he has not yet returned your deposit to you?

A. He has not.

Q. Has he told you that he expects to hold you to your offer in the event that Schine does not acquire the theater?

Mr. Friedman: I object to that.

The Court: The contract shows for itself, does it not?

Q. Was the offer accompanied by a written contract of any kind?

A. Yes.

The Court: In writing?

The Witness: Yes.

Q. Have you got a copy of that with you?

A. My attorney has.

Mr. Wright: I will ask to have this document marked [fol. 492] Plaintiff's Exhibit 2 for identification.

(Thereupon copy of offer made by Mrs. Fisher for the Liberty Theater, referred to, was marked as Plaintiff's Exhibit No. 2 for identification.)

Mr. Wright: It is dated March 2nd, 1944, addressed to Mellinson & Blaul, Brokers.

Mr. Friedman: Are you offering it?

Mr. Wright: I want to identify it.

By Mr. Wright:

Q. Mrs. Fisher, is this Plaintiff's Exhibit 2 a correct copy of the offer you made for the Liberty Theater?

A. Yes.

Mr. Friedman: If your Honor please, I object to the admission of that paper into evidence on the ground it is not signed by this lady and there is evidence here she never authorized Mr. Schuette, that man who works for her, to make the offer.

The Court: She made a deposit of $5,000.

Mr. Friedman: No, she said her man made a deposit of $5,000.

The Witness: No, no.

Mr. Friedman: I am sorry.

The Witness: Mr. Schuette's wife works in the office with [fol. 493] me. She wrote the paper up——

The Court: Never mind.

The Witness: Mr. Schuette signed it as a witness.

The Court: Never mind. Just a moment. Let us get this straightened out first.

Mr. Wright: If the Court please, this is a copy.

By Mr. Wright:

Q. You signed the original of that exhibit, too, is that correct?

A. Yes.

Mr. Friedman: I withdraw my objection, if your Honor please, if she signed the original.

The Court: Exhibit 2 in evidence.

(Plaintiff's Exhibit No. 2, previously marked for identification, was received in evidence.)

Mr. Wright: I think that is all.

The Court: Cross-examine.

Cross-examination.

By Mr. McCarthy:

Q. How long have you been in the theater business in Cumberland, Maryland?

A. Since 1924.

Q. Will you speak louder, so I can hear you and the Court [fol. 494] can hear you?

A. Since 1924.

Q. How many theaters have you there?

A. Two.

Q. What is the size of those two theaters?

A. One is 1350, and one is 669.

Q. The one that is 1350 is what is known as a first-run house; is that correct?

A. That is right.

Q. Whom do you buy pictures from for your first-run house in Cumberland?

A. Metro Goldwyn Mayer, United Artist, Columbia, some independents.

Q. The Schine Circuit came into Cumberland some time in 1941 or 1940, is that right?

A. Yes.

Q. They have the Strand Theater there, which seats about 1360 people?

A. Yes.

Q. During the period since the Schine people have been there have they ever interfered with the people you buy your product from?

A. No.

Q. They never have?

Mr. Wright: Just a moment. I don't think Mrs. Fisher is [fol. 495] in a position to testify as to what transpired between any of these distributors and the Schine-.

Mr. Friedman: I think she is in a position to testify as to what her experience has been, whether they have attempted to interfere with her or not.

Mr. Wright: She can testify to her own experience in buying films, but she has no knowledge whatsoever as to what representation Schine may have made to any film company at any time.

The Court: She can testify to her own contact——

Mr. Friedman: With the film people she does business with.

The Court: Not what somebody else said to somebody else.

By Mr. McCarthy:

Q. Has Schine ever, since they have been in Cumberland, shown in the Strand Theater any pictures that came from the people that you do business with?

A. No.

Q. Has there ever been a time since Schine has been in Cumberland while you were there that they took away from one of the people that you do business with a feature play or first-run picture and showed it in their house?

A. No.

Q. There has not been?

A. No.

[fol. 496] Q. Mrs. Fisher, do you know who Burke does business with, the houses that he does business with?

The Court: Who?

Mr. McCarthy: Burke, the owner of the Liberty Theater.

The Witness: R. K. O., Universal and Warner.

Q. His house is a 986 seat house, is that right?

A. Yes.

Q. Are you familiar with the house?

A. Not so very. It has been remodeled so many times. Fisher originally put in that theater, but I did not see it often.

Q. When was the last time you inspected it?

A. To be truthful, I have never inspected it. I have been in and out occasionally.

Q. Can you tell me the last time you were in it?

The Court: As nearly as you can tell.

The Witness: Probably last summer.

Q. At the time that you looked at it last summer, had it been offered to you for $100,000?

A. No, it was never offered to me for $100,000.

Q. Had there been any conversation with you about any offers of it for $100,000?

Mr. Wright: I don't see the relevancy of that.

Q. With you?

Mr. Wright: Hearsay, anyway.

[fol. 497] The Court: If it was not somebody in authority, that is true.

By Mr. McCarthy:

Q. Had you had any offer, any conversation with—who are these people, Mellinson & Blaul—about the price of it at that time?

A. No, they never approached me until 1944.

Q. Until 1944?

A. Yes.

Q. Before you made this offer, did you inspect the house to see what condition it was in?

A. No.

Q. The only reason you were so anxious to make this offer was, you thought Warner Brothers were the people who were going to get this theater?

Mr. Wright: Just a minute. I object to that. She has testified fully as to what her reasons were here.

Mr. McCarthy: This is proper cross-examination.

The Court: I will let her state the reasons for making the offer.

Mr. Wright: Yes.

The Court: State the reasons for making this offer that you made.

The Witness: Well, under pressure, and due to the fact [fol. 498] that this company might be powerful enough to hurt me and take my product, which Mr. Mosner assured me they would be. I had an unpleasant experience at one time, in Frederick, Maryland, and also Cumberland, with Warner Brothers. It was not anything drastic, but it could have been.

Q. Mrs. Fisher, have you any objection to the Schine Circuit buying this theater?

A. None whatever.

Q. Are you familiar with Mr. Schine's Strand Theater in Cumberland?

A. Well, yes, I am familiar with it. I don't go down often, but——

Q. As a matter of comparison, would you say Mr. Schine's Strand Theater in Cumberland is better kept up and maintained than the Burke Theater?

A. Well, I could not say, because I don't get in either one of these theaters often enough to say that with authority.

Mr. McCarthy: No further questions.

The Court: We will suspend now until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock.)

[fol. 499] After Recess, 2 o'clock p. m.

Appearances: As before noted.

Mr. Wright: Are you through with Mrs. Fisher?

Mr. McCarthy: Yes.

Mr. Wright: I don't think we have any more questions to ask Mrs. Fisher, your Honor. We have here a copy of the option agreement that Mr. Burke referred to in his testimony the last time. That was the agreement that he gave the agents authorizing them to sell the property. I think it has been agreed, or it is agreed that this copy here, which I will ask to have marked as Government's Exhibit 3 for identification is a correct copy of the agreement with his agents to which he referred.

Mr. Friedman: We do not know whether or not it is correct, but we do concede, if they were here to testify and said that is the correct copy, it is.

Mr. Wright: Yes, that Mr. Blaul, as agent, would testify that this Government's Exhibit 3 for identification is a true copy of the opinion agreement by which Mr. Burke

gave them authority to negotiate for the sale of the Liberty Theater.

[fol. 500] Mr. McCarthy: It speaks for itself, your Honor.

The Court: Received.

(Thereupon option agreement of Mr. Burke, to real estate agents, referred to, was received in evidence and marked as Plaintiff's Exhibit No. 3.)

Mr. Wright: The only further question, as far as we are concerned relates to Mr. Magruder. You will recall at the last hearing I stated that we had had a letter of protest from Mr. Magruder who operates a second-run theater at Cumberland, the Garden Theater. I also received a letter from Mr. Magruder on March 29th, when I spoke to him about being at the hearing, in which he said he is a diabetic and under the doctor's care for both diabetes and high blood pressure, and would be unable to be present on the 10th. I sent a copy of his letter to counsel with the suggestion, if they would stipulate that he would testify in accordance with the letter, it would be unnecessary to postpone the hearing or have him come at some other time or take his deposition.

Mr. Goodwin: I don't think that is a reason for postponing [fol. 501] the hearing.

Mr. Wright: Counsel stated they wanted to cross-examine him. I don't know what they want to bring out by cross-examination. Our only purpose in introducing the letter or having him here is simply to establish the fact that he does object, and I suppose there is no—as to the reasons of the objection, they are stated in the letter, and he sais in his subsequent letter he has nothing to add to what is stated there.

Mr. Friedman: Here is a man who runs a very small theater, by his very own admission, in comparison to the theaters owned by Mrs. Fisher and Mr. Burke and the Schines. Of course, we would want the opportunity to cross-examine him. We feel he has no real bona fide objection at all. The fact that he writes such a letter at the solicitation of the Department of Justice certainly is no objectionable reason. We would like to have the opportunity to cross-examine him, if he is presented.

Mr. Goodwin: The only testimony could be not as to whether he objected or not; the only relevancy of his testi-

mony would be the question of public interest and the com-
[fol. 502] petitive situation. If he could bring him in and have him testify with regard to that, we would have an opportunity to cross-examine him, seeing on what grounds he felt it was not for the public interest, if that is what he feels. I don't know that he would say that. The fact he objects is not material to any issue under this motion.

Mr. Wright: If the Court please, I would concede if called he would not testify that his objection was based on consideration of the public interest. He says very frankly in his letter that the reason he objects is purely because he thinks it might hurt his business. He says at the finish "as stated above, our viewpoint is admittedly a prejudiced one." There isn't any argument about that. It does not require any cross-examination to show that Mr. Magruder's objection is based merely on what he concedes to be his own self interest. I do think it is important for your Honor to know in a situation of this kind who does object and who does not, and the reasons for such objections. I do not suppose—it does not seem to me there is any dispute between us here as to the fact that this fellow does
[fol. 503] object and that he objects for, let us say, purely selfish reasons.

Mr. McCarthy: With that concession by counsel, we have no objection to accepting this letter for what it is worth.

Mr. Wright: I ask to have that marked.

The Court: Exhibit 4.

(Thereupon letter from Mr. Magruder to the Attorney General, dated March 16, 1944, referred to, was received in evidence and marked as Plaintiff's Exhibit 4.)

Mr. Friedman: I would like to ask Mr. Wright in connection with this same man Magruder. I would like a concession that Mr. Magruder runs a theater, one theater called the Garden with 425 seats. The capacity of the other theaters in Cumberland is already in evidence. And that his house does not run any first-run pictures, merely second-run pictures.

Mr. Wright: That is correct.

Mr. Friedman: One other concession, that his admission prices are much lower than ours.

The Court: What?

Mr. Friedman: His admission prices are much lower than [fol. 504] those of either the Strand operated by Schine, or the theater operated by Mr. Burke, or the theater operated by Mrs. Fisher.

Mr. Wright: I haven't any idea what admission prices he charges, but I am sure if he operates a second-run theater, he must charge lower admission prices than the first-run houses. That is universal practice.

Mr. Friedman: I have Mr. Wright's consent, if your Honor please, to submit in the record of this motion in connection with the acquisition of the Burke theater a photostatic copy of the Consent Decree entered into by the Southern District of New York in the action entitled "United States of America, Plaintiff, against Paramount Pictures, Inc., et al, Defendants."

Mr. Wright: Of course, your Honor, we don't agree at all that this decree is relevant to this proceeding, but we concede your Honor may judicially notice its contents.

(Thereupon Consent Decree in the Southern District of New York, referred to, was received in evidence and marked as Defendant's Exhibit D.)

Mr. Friedman: Not in connection with this Burke applica- [fol. 505] tion but in connection with the motion for modification, Mr. Scott, who is a 50 per cent partner in Schine interests in Harlan, Kentucky, and who I think wrote your Honor a letter, is here. We do not wish to call him as a witness, but he wants to appear and state for the record, because of the fact that he is going into the army on the 25th of April, his statement with regard to the modification, if your Honor gets to that point. His 50 per cent interest is ordered sold under the order, and I think your Honor has a letter from him in which he explains why he possesses that, and why he wants to perpetuate his testimony before your Honor, if your Honor would like to hear him.

Mr. Wright: We don't have any objection.

Mr. Friedman: Actually what we are doing is avoiding it going on the military calendar, because he will not be here later.

The Court: All right.

Mr. Goodwin: Have you any objection to excluding this

50 per cent interest from the operation of the temporary order?

Mr. Wright: I think we do, yes.

[fol. 506] Leon Bernard Scott, a witness, having taken the stand in his own behalf, having been first duly sworn, testified as follows:

Direct examination.

The Witness: Your Honor, my only interest here, of course, is the Margie Grand Theater in Harlan. On January 1st, 1940, I purchased this theater from my father. I borrowed quite a sum of money in doing so. During 1940 I had it all by myself. However, the latter part of 1940, business was not good enough whereby I could meet a note that I knew was coming due on the first of 1941. Therefore, I approached the Schine interests and eventually made a deal selling them 50 per cent interest in my theater —leasehold. Then in 1942 I received this subpoena here, and a letter from Mr. Thurman Arnold, who was at the time Assistant Attorney General, advising me that Schines were being compelled to sell their half interest in my theater.

Well, as I considered their operation so far as advertis-
[fol. 507] ing, exportation, much better than my judgment, I replied and objected on June 12th, 1942, and asked at that time that the order be modified whereby my theater would not be included. However, he did reply on June 19, 1942, and stated that he could not consider such a thing. He said the Department cannot consider any request for any modification of the order to permit Schine to retain its interest in the Margie Grand. If I am not mistaken I believe the order itself sets up that modifications can be considered.

Mr. Wright: Is he going to give testimony or are you going to make an argument?

The Witness: I am merely pleading.

The Court: What the effect of the order is, is for the Court to pass on. What else do you want to say?

The Witness: I heard no more relative to this case until a short time ago, a letter dated March 24th, from Honorable Tom C. Clark, now Assistant Attorney General, advising me that a hearing was being set today for appointment of a trustee to sell Mr. Schine's 50 per cent in the

Margie Grand Theater. During the first part of March, I [fol. 508] made a trip to Gloversville——

Mr. Wright: Have you got this last letter that you refer to?

(Witness hands document to Mr. Wright.)

Mr. Wright: Go ahead.

The Witness: During the first part of March I made a trip to Gloversville and saw Mr. Schine and left with satisfactory arrangements, whereby my family, which consists of my wife and three sons, would receive sufficient income while I am in service to carry out the program which we started about four or five years ago, that is, paying of my obligations, and insurance premiums—I mean—in 1940 I also bought a home, and to continue the payments on that. In other words, it is not—my letter to Mr. Arnold was for myself and my family. Right now it is merely for my family, because I will be going into the naval service April 25th.

The Court: Schine hasn't it for sale, you mean; just for a lease operation?

The Witness: I do not desire—if Mr. Schine was compelled to sell his 50 per cent interest, everything which I [fol. 509] have arranged would naturally be torn down.

The Court: My question was, as I understand your arrangement with Schine, it was not for sale, but for the operation, is that the point, under the conditions?

The Witness: I do not——

The Court: You have made some arrangement with Schine at Gloversville?

The Witness: Yes.

The Court: That was not for selling the 50 per cent?

The Witness: No, turned over the complete operation to them while——

The Court: During your war service. Anything further that you want to say about that?

The Witness: Nothing further. I might add, except, I have always found him to be very honest with me. I have no interest other than the 50 per cent in the Margie Grand Theater.

The Court: Maybe counsel has some questions?

Cross-examination.

By Mr. Wright:

Q. Have you got a copy of this last agreement you made with Mr. Schine?

A. A copy of what agreement?

[fol. 510] Q. The agreement you were just referring to whereby Schine would take over the operation of the theater while you were in the navy?

A. Not with me.

Q. Could you——

A. I can secure it.

Q. —procure one for us? I take it there is no objection to having that made a part of his testimony.

Mr. McCarthy: If there is a written agreement.

Mr. Friedman: Was that a written agreement or oral arrangement, Mr. Scott?

The Witness: It was papers which I signed by myself, whereby they would have complete operation of the theater. However, my wife who is also a stockholder, and my sister, will be able to vote the stock each year, the 50 per cent that I have.

By Mr. Wright:

Q. I take it, those papers, whatever they are, will make clear the precise nature of whatever the arrangement is?

The Court: Have you got a copy here?

Mr. Friedman: No, sir. We have no objection to that.

By Mr. Wright:

Q. In any event, whatever agreement you have with them is contained in these writings, that are going to be [fol. 511] produced?

A. Yes, sir.

Q. There is nothing outside of that?

A. Everything is written.

Q. This letter of March 24th, that you got from the Department with reference to the Schine investment in the Margie Grand Theater, did you ever answer that letter?

A. At the time, sir, I was in Lexington, Kentucky, having dental work done, and when I got back, I not only got that, but also got my draft notice, and so, as the time was rather

short, I took the liberty of writing the Honorable Judge Knight and requesting a hearing.

Q. The questions in this letter, however, asked for information as to circumstances under which Schine acquired the theater and the investment that was made. Is that covered in this letter that you have written to Judge Knight?

A. No, except the $25,000 that was paid to me, ten by cash, and two notes for ten, and one for five, which I, in turn, turned over to my father, part of it, I think $22,000, which paid him up in full. The remainder I paid to the bank, on what I still owed them.

Q. Was there some question about the bank foreclosing there at this time on their indebtedness?

A. Not at the time.

Q. You made the sale, however, in order to prevent the [fol. 512] bank from taking possession of the theater, is that it?

A. No, sir, I made the sale, because I was, as I stated, business was not too good in the latter part of 1940. I can tell you why, sir.

Q. Why was it?

A. On July 1st, 1940, there was a Federal Defense Tax put on admissions. I think where I made my mistake, instead of absorbing that tax, I added it on.

Q. Was there any other theater operating in Harlan?

Mr. Friedman: Were you finished with your answer?

The Witness: Yes.

A. Yes, there was.

Q. Who operated the other theater?

A. Mr. Price Coomber of Lexington.

Q. Schine had not been operating in Harlan prior to the time you made this deal with them?

A. I first became associated with Mr. Schine when my father had the lease on the Margie Grand in 1938.

Q. What was your association then?

A. The association at that time was an operating agreement.

Q. You had an operating agreement with Schine?

A. My father.

Q. Even in 1938?

A. Yes, sir.

Q. Was Schine then operating another theater in the vicinity?

[fol. 513] A. No, sir.

Q. Do you recall how your father happened to enter into that operating agreement?

A. You mean how he happened to—he entered into it—I had a proposed lease from Mr. Hiram Owens on the theater to be built in Corbin, Kentucky.

Q. That is nearby?

A. That is about 17 miles from Barbersville, and this proposed lease, I was to—for securing same, I was to get 50 per cent of it and my father the other 50. However, Mr. Schine—Mr. Louis Hinsler of Schine approached us, and purchased this lease, which met with our satisfaction, and there was nothing in it to say we could not sell it, I don't think—in fact, I know there wasn't, and also at the same time was when we made the operating contract. That is how we met Mr. Schine.

Q. That operating contract you made with him was one whereby Schine bought the pictures for you?

A. He bought the pictures for us, he booked the pictures for us. We got the benefit of his suggestions as to exportation, advertising and operation, and everything about the operating of a theater.

Q. I take it, the main purpose of making the operating agreement, however, was so you would get the benefit of Schine's booking and licensing of films?

[fol. 514] Mr. Friedman: I object.

Q. What did you say?

A. I would not say that, no, sir, because that is not true.

Q. Schine never was in opposition to you in that town.

A. Never has been in opposition to me.

Q. There were no other circuits operating in opposition to your theater at Harlan?

A. No, sir.

Mr. Wright: That is all.

Mr. Goodwin: On the basis of the situation shown by the testimony and what is shown in our report, I move the Court to eliminate from the temporary order, item 13, on page 4, relating to the Margie Grand Theater in Harlan, Kentucky. It is within the jurisdiction of the Court to make such an elimination. Although it is a Consent Decree, or

a Consent Order, we can submit authorities on that, but it must be obvious to your Honor that it is very unjust to force a partner upon this young man, a partner whom he does not know and may never know, and I will not go any further with the argument, but I want the motion to stand, and I can submit authorities or take it up.

The Court: How many theaters are there down there?

[fols. 515-517] The Witness: Two, sir. One other besides ours.

The Court: What class of pictures do you have, first-run?

The Witness: We both have first-run.

The Court: Who owns the other theater?

The Witness: Mr. Price Coomber, of Lexington, Kentucky.

The Court: Your town is——

The Witness: Harlan, Kentucky.

The Court: Harlan?

The Witness: Yes, sir.

Mr. Wright: If the Court please, there isn't any question, of course, to the Court's right to modify, but this is only one phase of the questions before you on our motion to appoint a trustee, and I don't suppose there is any point in trying to decide it without a full consideration of the whole matter.

The Court: I am just inquiring for my own information, that is all.

(Argument had with respect to motions.)

(Whereupon an adjournment was taken to April 11th, 1944, at 10 A.M.)

[fol. 518] IN UNITED STATES DISTRICT COURT

[Title omitted]

Proceedings before Honorable John Knight, United States District Judge for the Western District of New York, April 11, 1944, at 10 A.M.

APPEARANCES:

Honorable George L. Grobe, United States Attorney for the Western District of New York, by Robert L. Wright, Esq., Special Assistant to the Attorney General.

Messrs. Goodwin, Rosenbaum & Meacham, Shoreham Building, Washington, D. C., by Clarence N. Goodwin, Esq., and

A. E. Robert Friedman, Esq., 40 Wall Street, New York, N. Y., and

Edwin McCarthy Esq., 70 Pine Street, New York, N. Y., appearing for the defendants.

[fol. 519] PROCEEDINGS

(Argument had on motions).

Mr. Wright: Would you mark this request for admission of facts, with eight letters attached as Government's Exhibit 5?

(Thereupon request for admission of facts, with eight letters attached, referred to, were marked as Plaintiff's Exhibit No. 5 for identification.)

Mr. Wright: As I understand it, counsel concedes that the letters attached to Government's Exhibit 5 are true copies of those respectively written and received by the parties named therein on or about the dates they bear.

Mr. McCarthy: That is right.

The Court: Is there any concession made?

Mr. Wright: I read what I thought was the stipulation.

The Court: What is the answer to that?

Mr. McCarthy: We will admit these letters are true copies.

(Plaintiff's Exhibit No. 5, previously marked for identification was received in evidence.)

(Copies of Exhibits set forth in rear of record.)

(Further argument had on motions.)

[fol. 520] ROBERT H. BOLLING, a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Billing, will you state your address and occupation?

A. I live at Norton, Virginia, and I have been road contractor some several years, farmed some, too.

Q. Where is Norton, is it near Appalachia?

A. Ten miles, I think; ten or eleven miles from Appalachia.

Q. Are you familiar with the theaters in Appalachia that are described in the temporary order that was entered in this case?

A. Yes, I know about them. I pass there.

Q. Have you made any efforts to purchase them?

A. Yes, I have.

Q. Tell us what you have done.

A. Several different attempts—I made several different attempts to purchase those theaters when this order was first entered, requiring them to sell them back to the parties from whom they acquired them. Mr. Thomas, the owner, landlord of the Appalachian Theater called me and asked me if—he said he might have a theater to rent me, might have a deal to make with me on the Appalachian [fol. 521] Theater.

The Court: Thomas is the prior owner?

The Witness: He was the present owner as far as I know.

Q. He was the landlord?

A. Been the owner all the time.

The Court: Of the property?

The Witness: I did not pay any attention to it, did not really know what he was talking about, but he wanted to lease it to me, because I knew Mr. Murphy had made the sale to Schine, did not think I would have anything to do with it, and I told him that I did not know that I would be interested or could be interested. I did not know anything about the order except what I had just heard, that they had to sell them back without profit to the parties they had acquired them from, and I was on road work and busy and did not have any too much money and handled my own road jobs, so I did not pay any more attention to it for a good while. Then I decided, after finishing out a road job there, decided I would see if I could buy them, and wired Schines to have a conference with them. I don't remember [fol. 522] the wording of a wire. I don't have a copy of it, but I wired them that I wanted to talk with them about it. They wrote me back that my wire was indefinite and did not understand just what I wanted to talk about, if I would write them fully as to what I wanted to discuss, why,

they would discuss—they would take it up, or they would do something about it. Then I wrote them a letter fully explaining, I thought what I wanted to talk to them about, so——

Mr. McCarthy: Will you let him please identify this as to date, your Honor?

The Court: You wrote them a letter?

The Witness: Yes, I wrote them a letter in reply to their letter telling them what I wanted to talk about, that I wanted to buy the theater, and I never heard from them since.

Mr. Friedman: I think he ought to give us the date.

Mr. McCarthy: At least some idea as to the date.

The Court: I suppose the papers themselves would probably be the best evidence.

Mr. McCarthy: We had a lot with him.

The Witness: I have the letters here in my pocket. This [fol. 523] was in August, I think, 1942. I haven't heard anything from that letter yet, anyway.

Q. Have you got a copy of that letter?

A. I have. Here is their letter and a copy of my letter.

(Handing documents to Mr. Wright.)

Mr. McCarthy: Let us see what he is talking about.

Mr. Goodwin: May I see the letters from the Department of Justice there?

The Witness: Yes, sir. (Handing documents to Mr. Goodwin).

Mr. McCarthy: No objection.

Mr. Wright: I ask to have the original letters which the witness has produced marked as Government's Exhibit 6, dated August 21st, to Schine Circuit.

(Thereupon letter dated August 21st, 1942, from R. H. Bolling, to Schine Circuit was received in evidence and marked as Plaintiff's Exhibit No. 6.)

(Copy of exhibit set forth in rear of record.)

By Mr. Wright:

Q. Have you had any negotiations with them since this letter of August 21st, 1942, was written?

A. I had. The next attempt I made to purchase it was through Mr. Rich, real estate agent in Norton, whom I have traded a lot with. He wrote them about——

[fol. 524] Mr. McCarthy: I object.

The Witness: About December, he was acting for me.

Mr. McCarthy: Just a minute. I object to what Mr. Rich wrote to Schine. He is attempting to say what somebody else wrote.

The Court: Sustained.

By Mr. Wright:

Q. Just confine yourself to any negotiations you had with the Schine people.

The Court: Did you correspond or talk with any of them again?

The Witness: Yes, the next thing I did, I got Mr. Murphy to call Mr. Schine and ask him if he would sell. Then last week I called Mr. Schine myself and asked him to meet him for the purpose of trading.

Q. Which Mr. Schine is this?

A. That was J. Meyer Schine. I reached him in New York, at a hotel in New York City. I first called Gloversville, and then got him over there.

Q. What was the conversation you had with him?

A. He stated that he would see me and Mr. Murphy. We were operating together in this deal right now. It is the fact Mr. Murphy is interested with me.

Mr. Friedman: We did not hear that last answer.

[fol. 525] (Last answer read.)

Mr. McCarthy: Mr. Murphy is interested with him.

The Witness: In this conversation in this hotel in New York, over the telephone, he said he could not see us now, he was going away to Baltimore and other trips, and that he would be in Lexington, Kentucky, on Wednesday this week, and he would see us in Lexington, and I said to him that would be after this hearing. He said "I don't know when the hearing will be. I don't know when the hearing will be." And I told him we probably would see him in Lexington.

Q. Do you desire to purchase the State and Appalachian Theaters at the prices specified in the temporary order?

A. That is right, I will, if given an opportunity.

Q. By the way, you were not subpoenaed by the Government to appear here?

A. No, I was not. I was interested in acquiring those theaters down there. If they had to be put on somebody, if they had to dispose of them, I was interested in getting them. I followed this myself and called the Department of Justice to ask if there would be a hearing on this, yesterday, and I came here, too.

The Court: Do you own any other theaters?

[fol. 526] The Witness: No, sir, not now. I had a theater in Norton in opposition there, so I succumbed and sold my theater to my opposition, and that is my main reason for wanting theaters in Appalachia. Another reason is I have a son-in-law who is quite a theater man, according to his ideas, anyway; he likes it and he has been interested in running theaters, so I was trying to get it partly for his benefit.

The Court: How large a place is this?

The Witness: Appalachia?

The Court: Yes.

The Witness: It is around four—3500 or 4000 people.

The Court: How many theaters are there?

The Witness: They have two there. The property I used to own was sold to Mr. Murphy, the State, a little theater, and then this larger theater owned by Mr. Thomas, the landlord, known as the Appalachian Theater.

Cross-examination:

By Mr. McCarthy:

Q. Did I understand you to say, Mr. Bolling, that you had not heard anything from Schine since you wrote the letter of August 21st?

[fol. 527] A. No reply to my letter, that is right.

Q. Did you get this telegram (handing to witness)?

A. No, sir, I did not receive it.

Q. Did you get that telegram (handing to witness)?

A. No, sir, I did not.

Q. Did you send this telegram (handing to witness)?

A. I did not.

Mr. McCarthy: I ask to have these marked for identification.

(Thereupon three telegrams were marked as Defendants' Exhibits E, F and G for identification.)

The Witness: One reason I know I did not send that is the word you got "regards" on the telegram.

Q. So, you state, Mr. Bolling, that you did not receive a telegram on September 8th, 1942, which reads as follows——

Mr. Wright: He has already stated he did not receive it. It seems to me as though you are encumbering the record.

The Court: That is true. He said he did not receive or send it.

Mr. McCarthy: And he did not send this one here.

The Court: And did not receive those two.

Mr. McCarthy: It will be necessary for us to subpoena the records of the Western Union people in Norton, the [fol. 528] operator there, to refute this man's testimony, because this telegram is signed by this man's name, "R. H. Bolling."

The Court: Who were the others directed to?

Mr. McCarthy: Directed to him. Both directed to "R. H. Bolling, Norton, Virginia."

The Court: All right. Is that all of this witness?

Mr. McCarthy: No, I am not through with this witness.

By Mr. McCarthy:

Q. In your letter of August 21st, 1942, you state "I would be interested in repurchasing the real estate I sold Murphy, provided you would dispose of the lease on the other house and your equipment in both houses." What was the real estate you sold Murphy?

A. State Theater, the building that contains the State Theater.

Q. Did you know the terms of this temporary order at the time you wrote this letter?

A. No, sir, I did not. I had never seen it.

Q. Did you talk to Murphy about this purchase?

A. I talked to Murphy in the first place, when Murphy was considering taking them back on this notice that I mentioned here, about a 20-day notice which is in the order. I know about the order now, because I have a copy of it.

Q. Is this the same Mr. Murphy that appeared here before [fol. 529] Judge Knight at a hearing on June 15th, 1942, and was granted an extension of time to June 22nd, 1942, to purchase these two theaters, provided he made a deposit of $10,000?

A. This is Mr. M. K. Murphy from Big Stone, Appalachia.
Q. Were you in with him on that deal?
A. No, sir, I was not.
Q. You were not a partner of his at that time?
A. No, sir.

The Court: What is the date of that?

Mr. McCarthy: On June 15th, 1942, Mr. M. K. Murphy appeared before your Honor and you provided that he had an extension of time to June 22nd, provided he paid the sum of $10,000 for these same two theaters, the State and Appalachian.

The Court: What became of the interest in the other theater?

Mr. McCarthy: He never went through with this deal.

The Court: Is that still owned by Schine?

Mr. McCarthy: Yes, both the State and the Appalachian are owned by Schine. The State property, the Schine people own the fee, and the other is a leasehold, your Honor.

By Mr. McCarthy:

Q. From the time of sending this letter of August 21st, [fol. 530] 1942, until you received a letter from the Department of Justice, in the early part of 1944, you did receive a letter, did you not? Haven't you got it there?
A. Yes, I received a letter from the Department recently.
Q. That is the one I want.
A. Is that the one you are talking about?
A. What is the other one?
A. The same thing which I spoke about a while ago. (Handing document to Mr. McCarthy.)

Mr. McCarthy: Do you want to read them?
Mr. Wright: Are you offering them?
Mr. McCarthy: Yes, I am going to offer these letters. They are your letters.
Mr. Wright: We have no objection.
The Court: Received.

(Thereupon two letters from the Department of Justice to Mr. R. H. Bolling, dated March 24th and April 5th, 1944, referred to, were received in evidence and marked as Defendant's Exhibits H and I, respectively.)

(Copies of exhibits set forth in rear of record.)

By Mr. McCarthy:

Q. Now Mr. Bolling, from the time in 1942, when you wrote this letter, this last letter to which you say you never [fol. 531] received any reply, did you write the Schine people or telegraph them yourself in regard to the State and Appalachian Theaters at any time up until after receiving this letter dated March 24th, 1944 from the Department?

A. Not myself. I stated a while ago I had a real estate agent to offer to buy it.

Mr. Wright: What is the difference whether he did or not?

Mr. McCarthy: There is a lot of difference. I will proceed to prove it in a minute.

The Court: He said he did not.

Q. You were in the theater business in this particular locality at different times, were you not, Mr. Bolling?

A. Yes, sir, in and out of it. I was—built a nice building.

Q. During what years were you in the theater business there?

A. Well, I was interested as a stockholders in an operating company. I owned the building and leased it to an operating company for some several years. The house was built, known as Bolling Theater.

Q. Where was this?

A. That was in Norton, and a Mr. Barrs was the president of the operating company and ran the theater for some five or six or seven years, starting back there about 1932 or 1933.

[fol. 532] Q. In 1941 were you in the theater business in this locality?

A. I would not state as to the time there, but I did buy out my associate's interest and run the theater there, using my son-in-law as manager of it.

Q. I would like you to confine yourself to the time.

A. But I don't recall the time. I would have to check on that. That is what time it was. I would say it probably was in 1940 or 1941.

Q. 1940 or 1941?

A. I would say so, yes, but I only ran it for a few months until I leased it out and traded it out to Li-coln Theaters. They had a house in the same town.

Q. Appalachia is located in a coal mining section of Virginia, is it not?

A. That is right.

Q. High priced coal mining section?

A. That is right, so is Norton.

Q. High priced coal mine, anthracite section?

A. How is that?

Q. The section produced a high priced coal, high cost coal?

A. Not necessarily. It is not anthracite. It is soft coal, and they sell some dirt and slate along with it.

Q. But it does not operate profitably except when the profits of soft coal are high?

Mr. Wright: If the Court please, the best evidence of [fol. 533] the profitability of these theaters are the records that we subpoenaed that they did not want to produce.

Mr. McCarthy: It is all right. We are entitled to show the reason for Mr. Bolling's coming here and being so anxious now to purchase these theaters.

Mr. Wright: I assume he wants to because he thinks he can make some money with it. I don't think there is any argument about that.

The Court: He wants to see how much he wants to pay for it.

Mr. Wright: He says he is willing to pay the price.

The Court: Maybe he would be willing to pay more.

Mr. McCarthy: Anybody would pay the price in 1941, but they would not carry it two years.

The Court: What did you say about the coal situation? Is there anything in the product there which affects the——

The Witness: Sure, wartime conditions have a direct effect on money in the people's pocket. When the coal operators are getting out all the coal that they can get, and the market is calling for more than they can produce, which is the condition all over the country, everybody knows [fol. 534] that that reads the paper, certainly the miners have more money than what they would have in normal times, but Appalachia is—I have lived in Norton for 25 years or more, raised in the county, not so far away, and Appalachia and Norton have never been but what they were mining some coal and employing some people. Business was going along in a small way.

Q. Not like today; today Appalachia is a boom town of the first degree, is it not?

A. I would not say it is a boom town as compared—strictly speaking of boom towns we have over the country today, no. It is getting out product there, but there is no industries other than that mining.

The Court: Put it this way: The value of property today is more than it was in 1941.

The Witness: I would not say that it was very much more, no, sir. If somebody could guarantee how long this way would continue, and we would not have a drop-back to normalcy, might be another value.

Q. Now, Mr. Bolling, you have been trading in and out of theaters in this territory for quite a long period of time, have you not?

A. Not so very long. When I built the Bolling Theater, [fol. 535] first experience I ever had.

Q. Is that the one you sold to Murphy?

A. Well, that was about eight or nine years later than I built the house. In other words, I had been playing with it that time.

Q. When did you sell to Murphy—is this what is called the State today?

A. Yes.

Q. When did you sell that to Murphy?

A. That was about three years ago now. I don't remember dates. I have got no dates in my mind. About. It was sold about three years ago.

Q. You had held it eight or nine years at that time?

A. The State Theater?

Q. Yes.

A. No, I didn't own the State Theater. I owned it around two years, maybe less than two years, something like that.

Mr. Wright: He was talking, I think, about the theater at Norton.

The Witness: That is when I built the theater, in 1931. I built it in 1931.

Q. You have been in the theater business as far as 1931?

A. Yes, in a way I have been connected with it. I have been a landlord there. I had a pass to attend the shows.

Q. Are you familiar with real estate, theater real estate, [fol. 536] particularly in this territory?

A. Well, I am not entirely ignorant of it and I would not say that I am well acquainted with the values of real estate.

Q. Do you know what the Appalachian and State Theaters cost in 1941 when they were purchased by Schine?

A. I have heard. I don't know. Do you want me to tell you what I heard?

Mr. Wright: It is in the order. He said he has a copy of the order.

Mr. McCarthy: I submit I am entitled to get an answer from the witness.

The Court: Let him answer. Do you know?

The Witness: Mr. Murphy told me he got $75,000 for them, leasehold and real estate. I still held notes on that real estate. It was paid off not so very long ago.

Q. How much did your notes amount to?

A. I can't tell you exactly that. I think Mr. Murphy paid me $3,000 down, started paying $500 a month, and he had paid some, several monthly—several of those notes had been paid off, maybe five or six thousand dollars' worth of them, or maybe a little more, and when Schine bought it, why, they started paying the notes as Mr. Murphy had been doing.

Q. What was the total amount you got from this sale? [fol. 537] A. $45,000.

Q. You got $45,000 from Murphy?

A. I did.

Q. That was in 1939?

A. Well, or 1940.

Q. In 1940 you got $45,000 and Murphy sold the same property over in 1941 to Schine for $75,000?

A. Oh, no. He sold a lot of other stuff with it, and he sold some real stuff with it as compared with the value of that State Theater. The State Theater does not amount to much as a theater.

Q. How much did the other stuff amount to?

A. I understood it was $30,000.

Q. I thought you said some real stuff as compared to the value of the State?

A. I am talking about real business opportunity—show pictures.

Q. What did you really mean when you said that? Did

you mean that the State was worth more money or the other was worth more money? You said he sold some real stuff as compared to the value of the State Theater.

The Court: Some what?

Mr. McCarthy: Real stuff, that is what I understood.

The Witness: I don't think I said it that way.

The Court: What did you sell for $45,000?

The Witness: I sold a building.

[fol. 538] The Court: With the equipment?

A. With the equipment, fully equipped. It was not only a theater, but it had a large drug store room in it, and had some apartment rooms.

The Court: $45,000?

The Witness: Upstairs.

The Court: What did Murphy sell to Schine?

The Witness: He sold what I sold Murphy, identical stuff I sold Murphy, and he also sold him a ten-year lease on this Appalachian Theater, which was fully equipped theater, leasing for $550 a month.

The Court: That is the other theater?

The Witness: That is the Appalachian, yes.

The Court: That is all included in the $75,000?

The Witness: That is right, sir. That is my understanding.

By Mr. McCarthy:

Q. Today, in 1944, you are willing to buy back what Murphy sold in 1941 at the same price?

A. Certainly I would be willing to.

The Court: What is that price?

The Witness: I can't say I would be willing to pay any more for it, though.

The Court: You would not pay any more?

[fol. 539] The Witness: I might pay slightly more if it was necessary, if your Honor thought that they should be given more, but I doubt if you will rule that way, if you think that, when you have investigated——

The Court: What is the price in the order?

The Witness: —some of their buildings.

Mr. McCarthy: I think it is $76,000.

The Court: Counsel, does that order include the lease on the other theater as well?

Mr. McCarthy: That is right, the lease on the Appalachian Theater.

The Court: How would you propose to pay for it, in cash, I suppose?

The Witness: Well, I would prefer to pay about 50 per cent of it cash and the others in one or two years, the same way like they bought the stuff from Mr. Murphy, if I could. However, I can pay cash, if that would be demanded.

The Court: This $75,000 included the obligations, I suppose?

Mr. McCarthy: There have been some improvements made since that time, but we will go into that later, on the testimony of the value of this property.

Q. Now, Mr. Bolling, would you purchase the State [fol. 540] Theater alone?

A. I would not.

Mr. Wright: The order provides they are to be had as one transaction.

Mr. McCarthy: Just a minute. This is your man.

The Court: Go ahead.

Q. That is the one you sold to Murphy for $45,000?

A. Yes.

Q. You don't want to purchase that one back?

A. No, sir; no, not alone.

Q. Are you familiar with the lease on the Appalachian?

A. I have discussed it with the landlord there about the lease. I know what he said his price was, and I know about the building and the number of seats in it and kind of seats. Yes, sir, I know about that theater.

Q. Do you know the improvements made since Schine bought it?

A. No, sir, I would not say that I do know the improvements they made.

Q. Do you know that they have made improvements since they purchased and since the time of this order?

A. I have heard there were some new seats put in there by somebody, in the balcony, maybe changed the stairway getting into the balcony a little different, or something. I have heard that.

[fol. 541] Q. Mr. Murphy is your partner in this venture?

A. Yes, sir.

Mr. McCarthy: No further questions.

The Witness: He has a theater in Big Stone Gap, and is an old theater man, and we are both too old to be taken into the army, and we might run the theater until the boys get back.

Mr. McCarthy: We are not asking any questions. Please be quiet.

The Court: Strike it out. Anything further?

The Witness: There is one think I want to state——

The Court: No, no. Just answer questions.

The Witness: This is important to me. This telegram——

The Court: Counsel will ask any questions.

Mr. Wright: Of course, I think he ought to be permitted to make a statement.

The Court: Why didn't you ask him?

Mr. Wright: I did not offer him as a witness.

Mr. McCarthy: Oh, yes, you did.

Mr. Wright: He came of his own accord.

Mr. McCarthy: He came in response to your letter.

Mr. Wright: I suggested that he come, but he came at his own expense.

The Witness: I would like to answer that.

The Court: You called him to the stand.

[fol. 542] The Witness: I can tell you how I got here.

The Court: Never mind about that.

Mr. Wright: If he has some statements he should be heard.

The Court: I will let him state what is competent with reference to these telegrams. It cannot be hearsay.

The Witness: The only thing I wanted to state was with reference to these telegrams, that since thinking over the thing——

Mr. McCarthy: Just a minute.

The Witness: I think my son-in-law——

The Court: No, no, not what you think.

Mr. McCarthy: Just a minute, your Honor. He has testified positively that he did not receive these telegrams.

The Witness: I did not myself.

The Court: Just a minute.

The Witness: That is the reason that I did not remember——

The Court: Just stop a minute, will you please?

The Witness: Yes, sir.

The Court: You are required to tell what you know, not what you think your son-in-law did about it. If you have any knowledge as to what was done on these telegrams, you may state.

The Witness: I now remember my son-in-law said he [fol. 543] received this telegram and answered it in my absence.

Mr. Wright: Who is your son-in-law?

The Witness: W. H. Wren.

The Court: You said you never sent them. You learned after he sent them?

The Witness: That is right.

The Court: Why didn't you say that?

The Witness: I didn't recall then.

The Court: You did not recall those two telegrams?

The Witness: No, sir. They are not in my office. I had no copies. I keep a file. I had my bookkeeper to get the file on the stuff pertaining to this deal here.

The Court: You knew about your son-in-law. Why didn't you remember it before?

The Witness: It did not occur to me, because of a word at the end of the telegram "regards," in the telegram to Mr. Lazar, which he received in Lexington, used the word "regards" as the last word, and then I began to think, that is not my word. I would never use that word.

The Court: Who sent the telegram?

The Witness: My son-in-law, Mr. W. H. Wren, Jr.

The Court: Now did you know he sent it?

The Witness: I think he told me afterward. That is my [fol. 544] recollection. My recollection now is, I was away from home and he received it and sent it and told me about it.

The Court: You admit, then, that you received or had information of the two telegrams and the one you sent?

The Witness: I will admit the telegrams were sent. They don't have to have trouble digging up the Western Union, or anything like that, but it was an error I just made.

The Court: Never mind that.

Mr. McCarthy: I will now offer them in evidence.

Mr. Wright: No objection.

(Three telegrams, previously marked as Defendant's Exhibits E, F and G for identification, were received in evidence.)

(Copies of exhibits set forth in rear of record.)

The Court: That is all, I understand.

(Further argument had.)

The Court: You submit what you have and I will dispose of the whole thing.

Mr. Wright: I think there should be a time limit set on the issuance of a memorandum.

Mr. Friedman: May we have until April 30th?

[fol. 545] The Court: That is a pretty long time.

Mr. Friedman: This is the 11th. Two weeks, that is 14 days, to April 25th?

The Court: I think the 24th, anyway.

Mr. Goodwin: I think in a matter of this importance and the fact that there are many things that require attenion, including one that I have in the Second Circuit, we ought to have not less than 30 days to prepare a memorandum. I think it would be advantageous to the Court if we had 30 days, because we can present the matter then fully, and we have four matters, as I understand it, to cover. Two weeks, I don't think that is time enough.

Mr. McCarthy: I think we can get ready in two weeks. I think we can, your Honor.

The Court: What is your desire, Mr. Wright?

Mr. Wright: It is wholly a matter of your Honor's convenience.

The Court: Of course, if you put it too late, it may delay the trial.

Mr. Wright: We, of course, would object to any delay on the trial.

The Court: Is that all right to you?

Mr. Wright: The 24th?

[fol. 546] The Court: All right, Monday the 24th.

Mr. Friedman: The only matter which requires an early decision is the Burke application, because that option expires on May 1st.

Mr. Wright: If the Court please, that has no bearing on the matter.

Mr. Friedman: Oh, yes, it has a very important bearing. Here is a man 78 years old who comes into court——

The Court: Is there any reason why you cannot extend that for a short time, Burke's option?

Mr. Friedman: We can inquire and inform the Court.

Mr. Wright: There is one more thing. I don't believe these exhibits offered were read into evidence. I think it should be understood that they may be treated as though they have been read in evidence.

The Court: They are marked.

Mr. Wright: Yes, but I want to be sure.

[fol. 547] PLAINTIFF'S EXHIBIT No. 2

The Grace M. Fisher Theatres

The Maryland, First Run Pictures and High Class Stage Shows.

The Embassy, Pictures Only. Popular Prices. Air Conditioned.

Cumberland, Maryland

March 2nd/44.

Mr. Irving Millenson & Frank Blaul, Cumberland, Maryland.

I hereby wish to make a bona fide offer to purchase that parcel, or parcels of land, the buildings thereon, equipment contained therein, complete. Known as the Liberty Theater, and three store rooms, beginning at 18 N. Liberty St. and ending at 28 No. Liberty Street, inclusive Cumberland, Md. as more fully described in the land records of Allegany County, Md. Liber 134 Folio 564, for the sum of $140,000.00.

As a demonstration of my good faith, I herewith attach my check for $5,000.00 and agree to pay the balance upon delivery of a deed clear and free of all liens.

This bona fide offer is subject to your acceptance by June 10, 1944. If accepted, the $5000.00 is to be applied to the purchase price. If declined, the $5000.00 check is to be returned to me and the offer withdrawn.

———, L.S.

Witness: (Signed) Richard L. Schuette.

[fol. 548] PLAINTIFF'S EXHIBIT No. 3

Copy

Cumberland, Maryland,
December 11th, 1943.

For the sum of $1.00, we the undersigned hereby give unto Irving Millenson and Frank Blaul, for a period of six months, beginning December 11th, 1943, and ending June 11th, 1944, an option to purchase that parcel or parcels of land, the buildings thereon, equipment contained therein complete. Known as the Liberty Theater and three adjoining store rooms, beginning at 18 N. Liberty St. and ending at 28 N. Liberty Street, inclusive, Cumberland, Md. as more fully described in the land records of Alleghany County, Md. Liber 134 Folio 564, for the sum of $130,000.00.

We agree to pay all indebtedness, including mortgages, judgments, taxes, water rents, interest and indebtedness of all description and to deliver a deed clear and free to whomsoever Irving Millenson and Frank Blaul may designate.

Witness our hand and seal.

(Signed) Thos. H. Burke, S.S., Rita V. Burke, S.S.

Witness. (Signed) Jack R. Linaburg, 624 Frederick St.

[fol. 549] PLAINTIFF'S EXHIBIT No. 4

Edward K. Magruder, Pres.
Richard J. Magruder, Mgr.

The Garden Theatre Co.

Cumberland, Md.

March 16, 1944.

The Attorney General, R. L. W., 60-6-30-33-10, Department of Justice, Washington 25, D. C.

GENTLEMEN:

We have your letter of March 14 and in reply to it can only speak from the viewpoint of self-interest. Speaking from that viewpoint, we very definitely are opposed to the

Schine Chain Theatres, Inc., acquiring the Liberty Theatre of this city.

We are opposed to it because a small, independent theatre like ours simply cannot compete with a large and powerful chain, which can buy the pick of the available film product and usually at more favorable terms. A chain also, when it acquires several theaters in a town this size, can generally very effectively throttle competition by reducing admission prices. We feel that if the Schine Chain were to take over the Liberty, it would only be a question of time before independent operation in Cumberland would be impossible. [fol. 550] As stated above, our viewpoint is admittedly a prejudiced one. We trust this is the information you require.

Very sincerely yours, (Signed) Edward K. Magruder. (Typed) Edward K. Magruder.

PLAINTIFF'S EXHIBIT No. 5

Request for Admission of Facts

Pursuant to Rule 36 of the Federal Rules of Civil Procedure plaintiff requests that the defendants admit that the letters listed below were respectively written and received by the parties named therein, on or about the dates they bear, and that the attached copies are true copies thereof:

1. Letter of Clark C. Rader to Schine Theatres Corp. dated July 30, 1943, attached hereto as Exhibit "A";

2. Letter of Schine Circuit, Inc. to Clark C. Rader dated August 3, 1943, attached hereto as Exhibit "B";

3. Letter of Department of Justice to Goodwin, Rosenbaum and Meacham dated August 12, 1943, attached hereto as Exhibit "C";

4. Letter of Walter R. Wells to Schine Circuit dated [fol. 551] August 4, 1943, attached hereto as Exhibit "D";

5. Letter of Schine Circuit, Inc., to Walter R. Wells dated August 17, 1943, attached hereto as Exhibit "E";

6. Letter of Dan Weinberg to Schine Theaters, Inc., dated August 25, 1943, attached hereto as Exhibit "F";

7. Letter of Schine Circuit, Inc., to Dan Weinberg dated September 4, 1943, attached hereto as Exhibit "G";

8. Letter of Dan Weinberg to Schine Circuit, Inc., dated September 20, 1943, attached hereto as Exhibit "H";

9. Letter of Schine Circuit, Inc., to Dan Weinberg dated September 23, 1943, attached hereto as Exhibit "I".

———, Counsel for Plaintiff.

Dated this 24th day of March, 1944.

EXHIBIT "A"

(Attached to Plaintiff's Exhibit 5)

New Arcade Theatre, Newark, Ohio.

July 30th, 1943.

Schine Theatres Corp., Gloversville, New York.

Re Memorial Theatre, Mt. Vernon, O.

GENTLEMEN:

It is my understanding that you wish to dispose of your interest in the Memorial Theatre at Mt. Vernon, Ohio. [fol. 552] Will you immediately advise me as just what this interest consists of, and the price asked for same at your very earliest convenience inasmuch as I wish to purchase your interest provided the terms are right.

Sincerely yours, (S.) Clark C. Rader.

CC. Mr. Tom C. Clark, Dept. of Justice.

EXHIBIT "B"

(Attached to Plantiff's Exhibit 5)

Schine Circuit, Inc.,

Gloversville, N. Y.,
August 4, 1943.

Mr. Clark C. Rader, New Arcade Theatre, Newark, Ohio.

DEAR MR. RADER:

We wish to acknowledge receipt of your letter of July 30th, addressed to Schine Theatres, Corp., Gloversville, New York, a copy of which was sent to Mr. Tom C. Clark of the Department of Justice, with reference to the Memorial Theatre, Mr. Vernon, Ohio, which is one of the theatres referred to in the Court Order.

[fol. 553] These theatres, their names and the prices at which they were to be sold, and the terms as fixed by the Court, were nationally publicised, and for over a year were immediately available for sale.

We have applied to the United States District Court in Buffalo for permission to retain the theatres remaining unsold, and until the Court acts on our application all further negotiations on our part are in abeyance.

Very truly yours, (S.) Howard Antevil.
Howard M. Antevil.

HMA-bh.

EXHIBIT "C"

(Attached to Plaintiff's Exhibit 5)

RLWright/nlh.
August 12, 1943.

60-6-30-33-10.

Goodwin, Rosenbaum and Meacham, 1139 Shoreham Building, Washington, D. C.

Re: *United States* v. *Schine Chain Theatres, et al.*

GENTLEMEN:

We have been informed by exhibitors who are seeking to [fol. 554] negotiate with the Schine Circuit for the purchase of theatres listed in the Temporary order that Schine

has refused to negotiate with them on the ground that you have applied to the District Court for permission to retain the theatres. We have also been advised by Mr. Rosenbaum that these refusals were in accordance with his instructions.

In our opinion, the mere pendency of your application does not justify these refusals to negotiate and we believe that your clients may be guilty of contempt in continuing such refusals until and unless you obtain an order from Judge Knight relieving the defendants who consented to the order of May 19, 1942, from complying with that order. We should appreciate hearing from you as to your position in this matter.

Very truly yours, Tom C. Clark, Assistant Attorney General.

EXHIBIT "D"

(Attached to Plaintiff's Exhibit 5)

August 4, 1943.

Mr. Louis Lazar, Schines Circuit, Gloversville, N. Y.

DEAR SIR:

I am writing you in regard to the Liberty Theatre, Pike-[fol. 555] ville, Ky. I talked to you when you were here about a year ago about purchasing the theatre. I see in the papers that it is advertised for sale for the sum of $18,-943.92. I am prepared to offer this sum ($18,943.92) at this time for the purchase of this theatre, and all the stock in the theatre. This price is offered and Schine Theatres would have to clear all liabilities now against this theatre and surrender all stock.

If Schines are prepared to sell then I want the deal closed by Sept. 1, 1943. Awaiting your reply.

Sincerely yours, Walter R. Wells.

EXHIBIT "E"

(Attached to Plaintiff's Exhibit 5)

Schine Circuit, Inc.

Gloversville, N. Y.,
August 17, 1943.

Mr. Walter R. Wells, Home Furniture Company, Pikesville, Kentucky.

DEAR MR. WELLS:

There has been referred to me, for attention, your letter of August 4th, addressed to Mr. Louis Lazar, with reference to the Liberty Theatre, Pikeville, Kentucky, which is one [fol. 556] of the theatres referred to in the Court Order.

These theatres, their names and the prices at which they were to be sold, and the terms as fixed by the Court, were nationally publicized, and for over a year were immediately available for sale.

We have applied to the United States District Court in Buffalo for permission to retain the theatres remaining unsold, and until the Court acts on our application all further negotiations on our part are in abeyance.

Very truly yours, (S.) Howard Antevil.

Howard M. Antevil.

HMA:bh.

EXHIBIT "F"

(Attached to Plaintiff's Exhibit 5)

August 25, 1943.

Schine Theatres, Inc., Gloversville, New York.

GENTLEMEN:

Will you kindly send us information regarding the Appalachia Theatre properties which you have for sale by reason [fol. 557] of a certain Consent Decree entered into between your corporation and the Government. We particularly would like to know the terms and conditions of a leasehold, and also terms and conditions of the mortgage on one of the properties.

Very truly yours, Dan Weinberg.

DW-aw.

EXHIBIT "G"

(Attached to Plaintiff's Exhibit 5)

Schine Circuit, Inc.

Gloversville, N. Y.,
September 4, 1943.

Mr. Dan Weinberg, Bedford Theatres, Inc., Bedford, Virginia.

DEAR MR. WEINBERG:

I stopped in at the office for a few minutes this morning, and found your letter of August 25th, regarding the theatre properties in Appalachia.

For your information, the entire matter of the divestiture of theatres under the Circuit Order has been postponed to January 17, 1944.

[fol. 558] In the meantime, however, we would be very glad to have our representative meet with you, and if you care to look over the theatres, we would have no objection to your doing so.

Very truly yours, (S.) Howard Antevil.

Howard M. Antevil.

HMA:bh.

EXHIBIT "H"

(Attached to Plaintiff's Exhibit 5)

September 20, 1943.

Mr. Howard M. Antevil, Schine Circuit, Inc., Gloversville, N.Y.

DEAR MR. ANTEVIL:

With reference to your letter of Sept. 4 please refer to my letter of August 25. All we want is the information requested in that letter. If your theatres in Appalachia are not for sale any longer please say so.

Very truly yours, Dan Weinberg.

DW:aw.

[fol. 559] EXHIBIT "I"

(Attached to Plaintiff's Exhibit 5.)

SCHINE CIRCUIT, INC.

Gloversville, N. Y.,
September 23, 1943.

Mr. Dan Weinberg, Bedford Theatres, Inc., Bedford, Virginia.

DEAR MR. WEINBERG:

This will acknowledge receipt of your letter of September 20th.

Evidently you did not understand my letter of September 4th, in which I stated that the entire matter of the divestiture of theatres under the Court Order has been postponed to January 17, 1944. Naturally, therefore, all negotiations for any of the theatres are in abeyance.

Since you have inquired particularly regarding the theatres in Appalachia, we assume that you are familiar with them, and additional information may be found in the Court Order, a copy of which has, no doubt, been made available to you.

Very truly yours, (S.) Howard Antevil.

HMA-bh.

[fol. 560] PLAINTIFF'S EXHIBIT No. 6

Norton, Va.,
August 21, 1942.

Schine Circuit, Inc., Gloversville, N. Y.

GENTLEMEN:

Your letter dated Aug. 17 relative to my wire. I understood that you would be in this territory from time to time and that you had been considering disposing of your Appalachia houses. I would be interested in repurchasing the real estate I sold Murphy provided you would dispose of the lease on the other house and your equipment in both houses.

If you are interested in such a deal you can let me know when you will have a man in this territory that he could see me without the expense of a trip to Norton. I mean a man that can talk binding talk.

Hoping to see your man soon if you want to do some trading, I am,

Very truly yours, (Signed) R. H. Bolling.

[fol. 561] DEFENDANT'S EXHIBIT E

WESTERN UNION

JP134 18 DL XC— Norton Vir 9 133P.

1942 Sept. 9 P. M. 1 13.

Louis Lazar,

Ben Ali Theatre.

Sorry unable to see you in Lexington today hope to see you in Appalachia some other time regard—

R. H. Bolling.

DEFENDANT'S EXHIBIT F

WESTERN UNION

Copy

September 8, 1942.

Mr. R. H. Bolling,
Norton, Virginia.

Will be in Lexington Tuesday night the 8th and all day Wednesday the 9th and at your service. Will be happy to see you here at your convenience. Please wire or phone me care Ben Ali Theatre, Lexington. Answer Return Western Union. Regards.

Louis Lazar.

[fol. 562] DEFENDANT'S EXHIBIT G

Copy of

WESTERN UNION TELEGRAM

TWS 19.

September 9, 1942.

R. P. Bolling,
Norton, Virginia.

Mr. Louis Lazar is in Lexington today. You may contact him there in care of the Ben Ali Theatre.

Schine Virginia Corp.

DEFENDANT'S EXHIBIT H

DEPARTMENT OF JUSTICE

Washington, 25, D. C.,
March 24, 1944.

60-6-30-33-10.

Mr. R. H. Bolling,
Norton, Virginia.

Re: *United States v. Schine Chain Theatres, Inc.*

DEAR SIR:

The report filed by the defendants in the above suit in July, 1943, states that negotiations were carried on with you during September, 1942, with respect to a sale of the [fol. 563] State and Appalachia Theatres in Appalachia, Virginia.

We should appreciate your advising us as to what the present status of these negotiations is and whether or not you are still interested in acquiring these theatres. As a hearing on our petition for the appointment of a trustee to sell these theatres has been set for hearing on April 10, we should like to hear from you within the next few days.

Very truly yours, (Signed) Tom C. Clark, Assistant Attorney General.

DEFENDANT'S EXHIBIT I

DEPARTMNT OF JUSTICE

April 5, 1944.

RLW.
60-6-30-33-10.

Mr. R. H. Bolling,
Norton, Virginia.

Re: *United States* v. *Schine Chain Theatres, Inc., et al.*

DEAR SIR:

It is our understanding, in accordance with your telephone [fol. 564] conversation with Mr. Wright, that you will be present at the hearing in the above case at Buffalo, on April 10. We should appreciate your bringing with you all correspondence that you may have had with Schine in connection with your efforts to purchase theatres.

Very truly yours, (Signed) Tom C. Clerk, Assistant Attorney General.

[fol. 565] IN UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NEW YORK

Civil 223

UNITED STATES OF AMERICA, Plaintiff,

v.

SCHINE CHAIN THEATRES, INC., et al., Defendants

APPEARANCES:

George L. Grobe, United States Attorney; Tom C. Clark, Assistant Attorney-General; Robert L. Wright and Philip Marcus, Special Assistants to the Attorney-General; for Plaintiff.

Goodwin, Rosenbaum and Meacham; Edmund M. McCarthy; for Schine Defendants; Clarence N. Goodwin and A. E. Robert Friedman, of Counsel.

OPINION—May 4, 1944

KNIGHT, District Judge:

Several motions are here under consideration. (1) The Schine Chain Theatres, Inc., and its associated defendants (hereinafter called Schine) seek permission to acquire a theatre known as the Liberty Theatre, at Cumberland, Md., Paragraph 5 of the temporary order herein granted May 19, 1942, provides that these defendants shall not acquire any theatre unless the Court, after application and hearing, is satisfied that "such acquisition will not be against the [fol. 566] public interest after giving due consideration to the competitive situation, if any." The Liberty Theatre (hereinafter called "Liberty") is evidently in a position where it must be sold. The title is subject to a mortgage exceeding in amount any reasonable value of the property, and the holder of the mortgage is pressing for payment. Through its officials, the defendant Schine heretofore took up with the Attorney-General the question of whether the Department of Justice had objections to the purchase of "Liberty" by Schine. The Attorney-General by letter indicated his consent, upon submission of the proposal of purchase to and approval by the Court. The Department of Justice, now, however, opposes this application. Thereafter Schine made an offer of purchase, and that offer is here under consideration. So far as the record discloses no other offer for this theatre has been made, except one by Grace Fisher, the present owner of a theatre in Cumberland. This lady, as she testified, made an offer for the "Liberty" in the same amount as that made by Schine. This offer was made, as she testified, to prevent the purchase of the theatre by a company other than Schine. She testified in substance that on learning that Schine was a prospective purchaser she asked to withdraw her offer and the deposit made on it, and she now expresses her willingness that Schine make the purchase. She operates a theatre using the same class of motion pictures as that utilized by "Liberty".

[fol. 567] It seems that intervening this correspondence with the Attorney-General and the hearing upon this motion, the Department of Justice sent out numerous communications to possible prospective purchasers. The only reply which the record discloses is one by another theatre

owner in Cumberland, whose pictures are not of a class competing with those used by "Liberty." It was admitted upon the hearing that this last-mentioned individual would not testify that his objection was based upon consideration of public interest but upon purely selfish reasons. It seems quite natural that objections might be found on this ground. The weight if any of this objection is overcome by the other testimony had upon the hearing.

Since there are no offers, other than hereinbefore stated, since the owner of this theatre is desirous of selling and presumably required to sell, since the Department of Justice, through the Attorney-General, did express a willingness that Schine purchase and since no substantial ground for objection to this purchase appears, giving consideration to the question of the competitive situation, the Court is satisfied that this proposed purchase by Schine is not against the public interest.

The motion to permit the Schine to purchase the Liberty Theatre at the offer made is granted.

[fol. 568] (2) The defendants move to dismiss the suit for want of necessary parties. On March 17, 1941, the Court granted a motion dismissing the complaint as against five of the named distributor company defendants. The order was entered without objection by the remaining defendants. The five distributor companies were proper but not indispensable parties. The rule of determination is clearly stated in United Shoe Mach. Co. v. United States, 258 U. S. 451, in which it was said: "The relation of indispensable parties to the suit must be such that no decree can be entered in the case which will do justice to the parties before the court without injuriously affecting the rights of absent parties." Applying this rule, no merit is seen in the contention of the defendant.

This motion, therefore, must be denied.

(3) As an alternative to the Schine motion to dismiss, it seeks an order directing that it be not required to dispose of any other theatres or theatre interests as required by the terms of the order of this Court of May 19, 1942. By the terms of that order Schine was directed to dispose of all its interests in sixteen theatres within one year from the date [fol. 569] of such order. Schine was also required to furnish the Department of Justice with monthly reports show-

ing the efforts to dispose of the theatres, and at the end of the year it was directed to make and file with the court a report stating the theatre interests disposed of, those undisposed of and the efforts made toward disposition. Schine made monthly reports as required, and also, on or about July 3, 1943, filed a final report. It appears from the reports that Schine has disposed of all interest in six of the theaters in question, and the various reports purport to set forth the efforts made in the disposition of these and the remaining theatres. In effect the final report asserts that it was not been and will not be able to dispose of the interests then undisposed of and it asks that it be not required to make further effort in that direction.

Subsequent to the filing of the final report, by consent of the parties, further proceedings upon the report were suspended until in or about the month of February, 1944. Intervening the time of the filing of the report and the date last mentioned no effort was made to dispose of the unsold theatres or theatre interests, but the want of any effort in [fol. 570] this direction was likewise by consent. This postponement was agreed upon because consideration was then being given by the government to the question of the settlement of all questions regarding the motion picture industry as a whole.

The government now moves for the appointment of a trustee as a means of enforcing the provisions of the order hereinbefore mentioned relative to the sale of the aforesaid theatres. This motion is properly considered in connection with the motion of Schine to be relieved from the provisions of the order for such sales. The court entertains no doubt of its authority to appoint a trustee for this purpose. The order of May 19, 1942, provides that either of the parties may apply for any further order "necessary or appropriate for the * * * carrying out of this order or the enforcement of compliance therewith, * * *." The authority is well within the equitable jurisdiction of the court. See: United States v. Swift & Co., S. C. D. C., Equity 37,623, same 276 U. S. 311; id. 296 U. S. 106; Rule 70 Federal Rules of Civil Procedure. There are many authorities to the same effect. The order of May, 1942, was entered by consent of the parties. The court also entertains no doubt of its equitable power to modify this order where changed [fol. 571] conditions justify relief from conditions imposed. American Press Ass'n. v. United States, 245 F. 91; United

States v. Swift & Co., supra, 286 U. S. 106. The government urges that a trustee should be oppointed at least for the purpose of making a survey of the unsold properties and report to the court the steps necessary to obtain compliance with its order. Schine does not seek an extension of time in which to sell the unsold theatres. Its position in this respect is consistent with its reports of its efforts to sell.

After careful consideration of all of the questions involved in this motion, it is concluded that an order should now be made extending time in which to dispose of these theatres for a period of six months from May 15, 1944, or in the alternative, if Schine, within fifteen days from the date of the entry of an order herein, does not notify the court in writing that it will accept such extension on the condition herein stated, then and in that event a trustee shall immediately thereafter be named for the purpose of making a survey of these theatre properties and advise the Court as to what action should be taken with regard to them. In the event of future proposals for sale and purchase of these theatres, it is believed that Schine should not be held strictly to the terms of sale provided in the order [fol. 572] of May, 1942, but that any offer to sell and purchase shall be presented to the court for its approval and after notice to the government. While the court may have some hesitation in the belief that Schine has used every reasonable effort to sell these theatres when considering the fact that they have probably benefited financially, it does appear that they have made very considerable efforts in this direction. In view of this fact and the further fact, as hereinbefore stated, that the action upon the final report was withheld by consent until February of this year, it is believed that Schine should be given additional time in which to dispose of these theatres. It is to be impressed upon Schine that it is the present intent of the Court to see that the order aforesaid directing the sale of these theatres be enforced and that this extra time is given as a leeway, if it chooses to make the sales rather than have them made through the agency of a trustee.

It follows that the motion of Schine that it be not required to proceed further in disposition of the theatres or theatre interests in question must be denied and that the motion of the plaintiff for the appointment of a trustee also be denied, save on the condition that Schine does not elect [fol. 573] to accept a continuation of time in which to sell

such interests as hereinbefora set forth when a trustee shall be appointed.

The Court will confer with respective counsel in regard to the provisions of the order to follow this decision.

John Knight, United States District Judge.

May 4, 1944.

[fol. 574] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TEMPORARY ORDER OF MAY 19, 1942

On the annexed stipulation, it is

Ordered, that the Temporary Order entered in the above entitled cause on May 19, 1942 be and is hereby continued in effect with respect to all of its provisions from May 19, 1944 to May 31, 1944, inclusive.

John Knight, United States District Judge.

May 22, 1944.

[fol. 575] IN THE DISTRICT COURT OF THE UNITED STATES

STIPULATION

Entered May 19, 1944

It is hereby stipulated and agreed between the plaintiff and the defendants Schine Chain Theatres, Inc., Schine Circuit, Inc., Schine Theatrical Co., Inc., Schine Enterprises Corporation, Schine Lexington Corporation, Chesapeake Theatres Corporation, J. Myer Schine, Louis W. Schine and John A. May, by their respective counsel, that the Temporary Order entered in the above-entitled cause on May 19, 1942, shall be continued in effect with respect to all of its provisions from May 19, 1944, to May 31, 1944, inclusive.

John F. Clagett, Attorney for the Plaintiff. Seth Richardson, Attorney for the Defendants.

[fol. 576] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

ORDER—May 31, 1944

The following motions having come on to be heard before me on April 10 and April 11, 1944:

(1) Motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants for permission to acquire the theatre known as the Liberty Theatre at Cumberland, Maryland, in accordance with paragraph 5 of the temporary order entered in this cause on May 19, 1942;

(2) Motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants for dismissal of the suit for lack of necessary and indispensable parties;

(3) Motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants, in the alternative, that they be not required to proceed further under section 4 of the temporary order of May 19, 1942, in attempting to dispose of any of the theatres or theatre interests listed therein;

[fol. 577] (4) Motion of the plaintiff for the appointment of a trustee; and Clarence N. Goodwin, Edmund M. McCarthy and A. E. Robert Friedman appearing in support of the motions of the Schine Chain Theatres, Inc., and its associated exhibitor defendants, and Robert L. Wright and Philip Marcus appearing for the plaintiff in support of the motion of the plaintiff for the appointment of a trustee; argument having been had on said motions and the Court having rendered an opinion on May 4, 1944;

It Is Hereby Ordered:

(1) That the motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants for dismissal of the suit for lack of necessary and indispensable parties be and is hereby denied;

(2) That the motion of the Schine Chain Theatres, Inc., and its associated exhibitor defendants for permission to acquire the Liberty Theatre at Cumberland, Maryland, pursuant to paragraph 5 of the temporary order of May 19, 1942, be and is hereby granted without prejudice to the dis-

position of said theatre which may be proper upon a final decree in this cause;

(3) That except as hereinafter provided, the time for the Schine Chain Theatres, Inc., and its associated exhibitor defendants to dispose of the theatres ordered disposed of under section 4 of the temporary order of May 19, 1942, be and is hereby extended for a period of six months from May 15, 1944, or, in the alternative, if the exhibitor defendants, within fifteen days from the date of the entry of this order do not notify the Court in writing that they will accept this extension of time for the purpose of disposing of said theatres within that time, then, without further notice, the Court shall name a trustee who shall make a survey of the undisposed theatre properties and shall advise the [fol. 578] Court as to what action should be taken with regard to said theatres. If the exhibitor defendants shall file such consent, they shall serve the plaintiff with a copy thereof.

The exhibitor defendants shall make all reasonable efforts to effect the sale of their interest in said undisposed theatres pursuant to this order and the temporary order of May 19, 1942. In the event of future proposals for sale and purchase of these theatres, the exhibitor defendants shall not be held strictly to the terms of sale provided in the order of May, 1942, but any offer to sell and purchase shall be presented to the court for its approval after notice to the government.

(4) That the Government's motion for the appointment of a trustee be and is hereby denied without prejudice to the renewal of said motion, in the event that after having filed their consent to the entry of an order extending their time to dispose of said theatres, the exhibitor defendants shall fail to have made reasonable efforts to comply with said order or shall have been unable at the expiration of six months from May 15, 1944, to dispose of said theatres.

Defendant exhibitors within 90 days after the date hereof, and also six months after May 15, 1944, shall furnish to the Department of Justice a detailed report showing the efforts which have been made to dispose of the above-described theatre interests and the names and addresses of persons to whom the above described theatre interests have been sold during each such period.

It is further ordered that the question of the disposition by the defendants of the Strand Theatre, Cumberland, Maryland, pursuant to Section 4 of the Temporary Order entered in this cause on May 19, 1942 be held in abeyance, and the provisions of such section of the Temporary Order be stayed in respect to said theatre until further order of this Court. The Government shall have the right at any [fol. 579] time to apply to this Court for an Order requiring the disposition of said theatre by the defendants, and either party shall have the right to apply at any time for such other or further relief as may be just and proper. 10 days' notice shall be given to the parties of any such application.

Any of the parties to this order may apply to the Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this order, or for the enforcement of compliance therewith.

(S.) John Knight, United States District Judge.

Dated at Buffalo, N. Y., May 31, 1944.

[fol. 580] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

against

SCHINE CHAIN THEATRES, INC., et al., Defendants

ACCEPTANCE

The undersigned, exhibitor defendants, hereby notify the Court in writing that they accept the extension granted by this Court for a period of six months from and after May 15, 1944, within which to dispose of the theatres ordered disposed of in Section 4 of the Temporary Order of May 19, 1942, subject of course to the provisions of the first above mentioned order with respect to the Strand Theatre, Cumberland, Maryland.

Dated: New York, June 15, 1944.

Edmund M. McCarthy, Willard S. McKay, (S.) Willard S. McKay, Attorneys for Schine Defendants.

[fol. 581] IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Transcript of Testimony and Proceedings

Proceedings before Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York. Friday, May 19, 1944, 10 o'clock A.M.

[fol. 582] The Court: Who are the parties who appear?

(Appearances duly noted.)

STATEMENT

Mr. Clagett: May it please the Court, the Government would like to make the announcement, first of all, that we are ready to proceed with the trial as set down in the temporary motion, temporary order two years ago. In this connection I would like to say that Mr. Robert L. Wright, who has been and is in charge of this case will be here in the matter of a few days. He is temporarily detained in Pittsburgh in the trial of a criminal case there.

Of course, in announcing that we are ready to proceed with the trial, we are cognizant of your order for a pre-trial conference this morning, and assume, of course, that that is the primary concern this morning.

I would like to recall to your Honor that the Government filed a request for admission of facts in this case early in 1942. That request, of course, was based upon the desire to save time and to simplify the trial. The facts and the evi-

[fol. 583] dence proposed to be stipulated to were to a considerable extent based upon the defendants' own answers to interrogatories, as was felt highly desirable, to organize that material into one document in an orderly fashion relating to the towns and situations to which the various pieces of fact and evidence applied.

It was also desired to stipulate to such matters as to corporate existence of distributor defendants, the number of pictures annually produced by them, and other matters of that kind. However, you will recall that the defendants made a motion to dismiss the Government's request for admission of facts, and that is the way the matter stood at the time the temporary order was entered.

Now, in anticipation of the trial of this case on May 19th, the Government has submitted to counsel for the defendants a proposed stipulation of facts which, to a very considerable extent embodied the same material which we had originally included in the request for admission of facts filed in [fol. 584] the spring of 1942.

In this regard, however, I think it is fair to say that the Government has had no definite answer with respect to whether we could stipulate, or whether we could—whether they desired to do so or would attempt to do so, except last night, I think I should say, I talked to Mr. Richardson on the telephone and he did indicate that he thought it was desirable to stipulate the facts and evidence as far as possible.

We feel, of course, your Honor, to proceed with this pretrial conference at this time to endeavor to stipulate as far as we may to facts and evidence is highly desirable because of the broad scope of this case, the length of its pendency, and the past efforts of the Government in this regard.

We feel at this time that it would be particularly desirable to stipulate as to the authenticity and genuineness of a vast amount of material, contracts, and documents which we have subpoenaed from the exhibitor defendants, and from the distributors, which would obviate the necessity of [fol. 585] calling a great many witnesses, particularly from the various distributor defendants, to identify various contracts and documents that we shall offer in evidence.

The Court: Have you submitted to counsel a proposed stipulation of facts?

Mr. Clagett: We have, sir.

The Court: It seems desirable to me, to have this pretrial conference. There are probably numerous matters and details that could be stipulated to. That is why this was set down for today. What is the thought of counsel for the defendants?

Mr. Richardson: As soon as Mr. Clagett is through with

his discussion, I do want to discuss at some length the position of the defendants, which includes that feature.

Mr. Clagett: Well, your Honor—reverting to another matter for just a moment—we assume that the defendants are ready to proceed with the trial as fast as we can and conclude whatever we are going to do about a pre-trial proceeding. Of course, they have had notice ever since the temporary order was entered that the trial date was May [fol. 586] 19th, 1942, and in addition Mr. Wright, in the hearings before your Honor at the end of March and in April on the various motions then pending, announced that the Government expected to proceed with the trial at that date. I don't know what your Honor's disposition toward these several motions will be, but there are several motions here, or rather, I believe there are only two, the Government's motion to dismiss the remaining three distributors as parties defendant, and there is the motion by the defendants, if the Court grants the Government's motion to dismiss these three distributors, to dismiss the suit, and then in addition to that we have, which I think we ought to have before us, the question of the settlement of the order, which your Honor in your opinion of May 4th, directed that counsel confer with you upon.

The Court: The form of the order you mean?

Mr. Clagett: Yes sir. We have formulated a proposed order ourselves, and in this connection we have contacted counsel for the defendants, but have had no affirmative answer as to a time when that could be done, or as to the form [fol. 587] of the order which we might fundamentally agree upon between ourselves.

That is all, your Honor, that I have to say at the moment.

STATEMENT

Mr. Richardson: If your Honor please, I am Mr. Seth Richardson of Washington. I want to discuss this case at some length, and I hope your Honor will bear with me, because I want to assure the Court it is one of the most embarrassing situations I have ever been in in my life. Wednesday afternoon in Washington we were approached by the defendants in this case, stating that their former counsel had been interested and acted in attempting to get a settlement of this case through a consent decree, had advised them that their efforts were unavailing and were with-

drawing from the case. I came immediately from Washington via New York to Buffalo to be here this morning with reference to it, and during that interim of leaving Washington and coming here, I have endeavored as much as lay in my power, to go into the records and pleadings in this case to acquaint myself sufficiently with it to say the rather [fol. 588] scattering words that I want to say to you here this morning.

Before I left, in order to get information, I endeavored to get in touch with the only lawyer whom I knew in Buffalo, who is my old friend John O'Brian. He is with the W.P.B., and was out on some Government business, and I did not even have the solace of talking to him about it.

As soon as I got in I called Mr. Clagett last evening. The papers that were presented to me, and the papers that I have which, of course, was the only information that I had about this case, contained a notice of a pre-trial hearing. A pre-trial hearing, as your Honor may know, is one thing in one jurisdiction and another thing in another jurisdiction. Generally through the courts they are developing, and we do not want to do anything that would prevent the fullest kind of a pre-trial hearing when such a hearing can be properly taken up.

When I talked to Mr. Clagett last night, it was the first information that I had had that the Government was pro- [fol. 589] posing that this case be immediately tried. I noticed in the file a list of some 75 individual witnesses that were to be interrogated by the Government in this case, coming from a multitude of different cities in which cities, I assume, the defendant Schine Circuit had theaters.

I asked Mr. Clagett then—I am not dragging in any private conversations at all, but just this word of information —as to how long he thought the case would take him, and he said he thought the presentation of evidence would take five weeks.

In the file which was handed to me was this stipulation of facts with which in its general purpose I am a hundred per cent in favor, but this stipulation of facts will require, if I am to have anything to do with this case, my own examination of the various facts to be stipulated, or compared with our records for the purpose of ascertaining whether or not the facts are as stated, whether they are complete, whether there has been any mistake made, and then, Mr.

Justice, comes the question of our own stipulation, proposed [fol. 590] stipulation of facts, because it is perfectly apparent from this case that these defendants will find it necessary to prepare a lengthy stipulation of facts to present to the government with the idea that with the two stipulation of facts, united we can relieve this Court of possibly two-thirds of the time of sitting here on this bench to try this case, but I want your Honor to appreciate my embarrassment, because I don't know enough about this case to, in the first place, adequately consider Mr. Clagett's carefully drawn stipulation of facts. I have never seen the one presented two years ago, and I shall discuss that in a moment. However, beyond that, I have had no opportunity whatever to examine our records and our facts for the purpose of making up our stipulation of facts, and my experience with pre-trial conferences is that if it is possible, those stipulations of fact should be presented to the Court when the Court is supposed to carry on a pre-trial conference, so that the Court by his ruling in the pre-trial conference can make [fol. 591] the advances which have been made by reason of that stipulation. Let me review for a moment, in view of the fact that it is necessary in order to present my position to the Court, the history of this situation. The first attempt by the Department of Justice, speaking generally, to take care of what seemed to be a clash between the film industry and the Sherman Law, came with the proceeding brought in the District Court in New York City against the five big producers of pictures, which I do not need to say to your Honor are the five biggest producers, the five biggest distributors, and the five biggest exhibitors of moving pictures that there are in the United States, and it is no more possible to establish a rule for the moving picture industry in the United States without having that rule based upon the action of those big five, than it is to take care of an elephant by pulling his tail and leaving the rest of him alone.

That was the first suit brought. Following that suit, the parties got sufficiently together to have a consent decree [fol. 592] for a three-year period. It is important, I think, for me to say that it is perfectly evident that both sides were dealing with an unknown quantity, to-wit, "What is the proper legal relation between the Sherman Act and the film industry, divided as it is between production and distribution and exhibition?" So, the decree had the requirement that it was only good for three years. The next year, a year

and a half, I think, later, a suit was brought against the Big Five, as we may call them, to which were added three more producing companies known for the purpose of our discussion here as the Little Three, and to those were added the Schine defendants in this case.

The Bill of complaint, I think I should say, as your Honor knows—and I am using your Honor's valuable time for things your Honor knows, but I must get it out of my mind in my own way—the bill of complaint took us all, the Big Five, the Little Three, and the Schine people, and charged us with a joint conspiracy in the distribution end of the [fol. 593] business, in the exhibition end of the business. We had nothing to do with the distribution. We were entirely exhibitors. The distribution activities and the distribution records were all in the hands of the people with whom we did business, and with whom in many instances our relations were not particularly friendly, because we were trying to get something and they did not want to give it to us.

Then we were met, if your Honor please, with a motion on the part of the Government, the first of these rather extraordinary motions, to take out of that case those five big defendants, five defendants that I say with all conservative feeling in my mind dominate the film situation in the United States so far as determining what is the relationship between the Sherman Anti-trust Law and the activities of the film business. They were taken out. Your Honor referred to the fact in a later opinion that you wrote with reference to them, that there was no objection to their being taken out. If so, there was some oversight in that [fol. 594] regard, but they were taken out, and that left the second case with the Big Five out, the Schine Circuits in, and the three distributors still remaining known as the Little Three in that case. Bear in mind again, if your Honor please, we are not only charged with wrong-doing in the operation of our theaters in the various towns in which we have theaters, but we are charged with conspiring with those distributors so that the acts of the distributors become the acts of a co-conspirator against us.

We have no power whatsoever of entering into the distributors' records. We have no right to go to them if they are not parties to this action, and walk in and take a look at their books and records and letters and correspondence for the purpose of ascertaining how has the distributing

business been run so far as the exhibitors are concerned. The Government, on the other hand, has the fullest power to go into the distributors' business and get all the records possible.

As I say, while the suit retained us and the three lesser [fol. 595] distributors, there was what I call the "Two-year order", which was entered into in that situation. I ask your Honor to remember, first, the inclusion of the Big Five, the elimination of the Big Five, the entry of the consent decree for a three-year period, and then this two-year order which was put in effect two years ago which contained the provision not that the trial would be held on the 19th, but that on the 19th of May, 1944, the case would be on the Calendar for trial, which is a very different thing so far as notice to us is concerned.

After that two-year order was made and assented to by us, there was a later hearing before your Honor in which the question was taken up as to compliance. In connection with that your Honor made a further order requiring the Schine defendants, whom I am representing for the moment, to advise you whether they accepted the terms of your order, and which I may now say to your Honor, they do accept, in connection with the six months' extension which you granted, so that we had that two-year order, we came [fol. 596] before your Honor, and you made a ruling with reference to it. That order provides, among other things, your Honor, that this case should be at rest during that two-year period, in effect nothing should be done during that two-year period, and I am going to call your attention in a minute to the red line of connection that runs between the dismissal of the Big Five, entry of the consent decree, entry of the two-year order, and then we come to the fourth step that I am presenting to the Court, and that is the statement made by the authoritative head of Department of Justice in February, 1944, Assistant Attorney-General Clark, that it was the intention of the department to withhold all of these film cases until there had been a settlement of what was to be the dealing with the Big Five, because their consent decree had expired in the Fall of 1943, and the Government was negotiating with them and is negotiating with them still for the purpose of finding out the basis for the future consent decree that shall bind those Big Five. Bear in mind, as I call your attention again, [fol. 597] the position of the Big Five, either as producer

or exhibitor or distributor is so infinitely greater than ours, so infinitely more wrought with danger to the welfare of the country under my friend's interpretation of the Anti-trust Law than ours, that there is no comparison. So, when Mr. Tom Clark said it, and you have the publication in our trade journal of the statement of Mr. Clark in February of 1944, that there would be no trial of this case while the other was pending, I suggest that was a very logical statement, because I said it is a futile thing from the standpoint of establishing the law with reference to moving picture elements, unless you have before you the main actors. It is not a case where the main actors could not be brought before you; it is not a case where they were at large and you could not get service. They were brought into the case by the Government. They were charged as conspirators by the Government and then released by the Government, and the Government took what? They took a three-year consent decree. Your Honor has had a great [fol. 598] deal of experience on the bench. Your Honor was appointed when I was in the Department of Justice in Washington under Mr. Mitchell, but you have had a great deal more than I have had. I never knew before a consent decree in an anti-trust case that was limited in point of time. The reason it was limited was because of the uncertainty which the Government and the industry had as to how far the decree should go, and would it be workable and practicable, and this was an acid test.

At the end of three years the argument is renewed, the Government wants this, the film people want that, and it is possible there will have to be a trial of the issues as against the Big Five in order to determine the relationship of the Anti-trust Law to the film people.

In the spring of 1942, it was naturally in your point of view to have this two-year order held in status quo, the status of the Schine Circuit, and hold it there for two years. Why? What merit is there in two years? Only, your [fol. 599] Honor, so that the course of dealing with the film industry as evidenced by the consent decree, as evidenced by the two-year plan and later testified to by Mr. Clark's announcement, so that the thing was to be worked out so that when a rule was finally adopted it apply to the little fellow and it apply to the big fellow. The holes in the net were not too little to stop the little fellow and too big to let the big fellow out. That was the purpose of it.

Now, if your Honor please, we come to the effect that this situation has on us. As long as the distributors were co-defendants in this conspiracy case, we did not have to worry about the proof of those companies from their records with reference to how the distribution has been carried on. If an alleged exhibitor who makes charges against us and who my friends desire to call as a witness comes and says "I could not get any films", we have seated at the table counsel who say "You got 114 films in such and such a time", and if they are in this case and have to [fol. 600] defend themselves, that burden falls off our shoulders, and only within the week we have been faced with the second motion to rid this case of the only help we had left, that is these three distributors.

I am not urging it here, your Honor—there may be a later motion to call it again to your Honor's attention—the question of the right to maintain this suit after a dismissal of the main conspirators, because your Honor can see—I just divert to it in passing—if you adopt a rule in this case with reference to whether the Schine Circuit erred in its relations with the distributions, you may have tomorrow a case in which the distributors are present with their lawyers and witnesses and we may find it necessary to have another ruling. That is one of the reasons we may address ourselves later to you as to whether this case can progress at all, except by dismissal, when you let the main defendants go. I am not urging that here. I am urging the increase in burden thrown on us in connection with the trial of this case.

I have before me a subpoena duces tecum which was [fol. 601] sent to us, if I recall correctly, on Tuesday of this week. This subpoena is only limited by the number of sheets of paper that could be put into a typewritten instrument. It calls for something like 40 or 50 pages of records here, and then there is clause after clause stating "All of the letters, all of the correspondence, all of the inter-company memoranda, all of our private files that exist that had any relation to these specific contracts." We got that on Tuesday. Our people were in Washington trying to find any lawyer. Unfortunately enough they found me. They were not at home. This was telephoned, that this was in. There are enough records to fill four or five trucks involved in this case. I cannot help what was done two years ago. My information is there was

no examination made of them two years ago. There never was an examination made of them in detail for the purpose of ascertaining whether they complied with the subpoena, and what they are.

Don't you see, we must take each letter, your Honor— [fol. 602] I say so because I have done it in other cases— we must take each letter, read it, and ascertain whether it comes within the subpoena, and that is imposed on us within the week, a company that employs nearly three thousand people, with five hundred of our employees gone in the war, short-handed on every turn, and with a business that requires daily attention from one end of our circuit to the other, and we are told last night the Government is ready for trial and they propose to go on trial today if they can.

Leave out of it my own personal thoughts; you can readily see the burden placed on the Schine people. Contrary to the purpose of the original consent decree, contrary to the purpose of the two-year decree, contrary to the information given by an official of the Department of Justice that all of these cases were to await the determination in the main film industry, we are suddenly met with the demand "This must be tried immediately; the Judge must begin taking evidence of these 75 witnesses", and so forth.

[fol. 603] That brings me to my own personal situation. I want to discuss that and the pre-trial hearing, these subpoenas and stipulations of facts, not from my amateurish standpoint, but from having had a long and unfortunately not successful contact with my former brethren in the Department of Justice with reference to anti-trust cases. For four years I was the chief counsel for the defendants in the American Medical Association case. That was fought in every court that it could be taken to, and we went through pre-trial—everything with reference to it, even though that case was a criminal case. That was followed, if your Honor please, for the last four years and at the present time with the handling by Mr. George Wharton Pepper and myself of the Pullman case, which went through the preliminaries of examination of records, pre-trial hearing, stipulations of facts and the like, until when we finally went into court— that was an expediting court, three circuit judges sitting— we went in court and advised the Court that three-quarters [fol. 604] of the ground covered by the case had been agreed to between us. I may say to your Honor, that the Court in

its final decision, which I also very much regret to say was unfavorable to my side, that the Court accepted every single one of our stipulations of facts, added some more, with only a few of which we disagreed, and instead of the case taking, as the Court thought it might, the length of time that the Aluminum case took, it was handled expeditiously, so that these three circuit judges could perform their own duties at the same time.

In discussing the procedure I want to discuss, I am doing it on the standpoint of having dried my teeth on the leather in this case. Here was the way the matter was handled there. Take the Pullman case as an illustration. The Government came to us and asked permission to let the Federal Bureau of Investigation go in and examine our records in Chicago. This case was pending in Philadelphia. That was consented to, and they moved into our offices and took our records. Our men accompanied them. As they selected [fol. 605] a record they wanted a copy of, our people took a copy, so that we kept in step with them all the way through, and they took out of our files six thousand documents. It took them, I should say, three or four months to make that investigation, as carefully as the government makes its investigations, and nobody knows how good they are better than I do. When that was completed, we then had their files, they had our files. We had interminable conversations which went on for two or three months, and were conducted sometimes three or four times a week, where we sat down across the table from counsel and wrestled over these statement- of facts, and there was a corporation with records going back to 1870, and we had to check it all the way through, and when we got through we saved the Court four-fifths of the time to try the case. After we got our stipulations of facts, we advised the Court, and the Court set it down for pre-trial hearing about October 1st. We had our pre-trial hearing. The Court identified our stipulations. The Court got some additional [fol. 606] statements of fact that we could not agree on. With the aid of the Court, we got them. When we got through with the pre-trial conference, the Court said to the Government "I want to give both sides full opportunity to digest what has been done here," and there was a delay of a month or two months, and then the case came up for the Government's evidence. The Government put in its evidence, and then the Court adjourned the hearing for, I

think from the first of December to the first of March. When we had done that, we put in our evidence. Then there was a week or ten days' delay, as long as the Government asked for it, for them to put in rebuttal.

If your Honor please, as a result of that, the celerity with which that case was disposed of up to the time we got fighting with the decree, which has now run for over a year, is remarkable. In approaching the question of the pre-trial conference this morning, I cannot help but have that idea in my mind. Counsel says he faces five weeks to examine [fol. 607] these 75 witnesses. I am not at all sure, if he has 75 witnesses and they testify as to controversial facts— I am not at all sure that he has not very much minimized the length of time it will take, but if we have an opportunity to take the names of the witnesses and the towns they come from and get our facts with reference to them, it is quite possible that a large number of these witnesses will meet with no cross-examination on our part. There will be no delay with reference to it.

That brings me to my own situation. You can see the situation I am in. The counsel who preceded me, an acquaintance of mine, Judge Goodwin, is inhibited by certain physical defects from even contemplating going into a trial of this kind. This case came to me on Wednesday. I have no desire to procrastinate it. I would dearly love to have my finger in it, to work out the future of this film industry. It is great litigation. The cases that finally come from it will be among the great cases in the United States in all probability, and my friend has the same laudible ambition, [fol. 608] but, if this case is to go to trial at the present time with my knowing nothing about it, I can do nothing but turn to my client and say "I had to withdraw from it." When I do that, he has no counsel. He is a layman, cannot try the case himself. I may have been not wise in not foreseeing this demand for trial. I did not understand from the motions in April that there was to be a trial on the 19th of May. I did not understand from what he told me or what I found in the records. Now, we are faced with a deadly situation of the Government—and I do not blame the Government. Your Honor must not get the idea that I am criticizing them—but we have a deadly situation. I have one thing more to add to my discomfiture. I have promised and made great preparation to go into an extensive Civil Aeronautics hearing commencing the 12th of June, which

will probably last most of the month of June. There are 25 or 30 airlines involved. My people have asked me, and I have accepted their retainer, and I must participate in [fol. 609] this case. If this case starts, I cannot continue to represent the Schine Circuit, because I have to go back to Washington in June and take care of the other proceeding, and the Government does not gain anything particularly in those two weeks. It seems to me that I must say to my client "I can't go with you. It is going to be tried." He must go out and try to get a catch-as-catch-can lawyer, because you can't try this case by ear. He can't come in and try to get acquainted with this case and carry it on and try the case, as the Government wants to now.

Why shouldn't there *shouldn't there* be a material and substantial continuance of the date of trial of this case, your Honor? It was for that purpose that the Big Five were taken out of the first case. It was for that purpose that there was a limited consent decree entered into. It was for that purpose the two-year order was signed. It was for that purpose that Mr. Clark, Assistant Attorney General, made his statement to continue these matters until the Court would have them all before them.

[fol. 610] We have now, from what Mr. Clagett said to me last night, and with which I was familiar, a case in Tennessee known as the Crescent case. The first suit brought was one in Oklahoma against a chain of theaters, the Big Five included. The next suit was brought against us—no, I think the next suit was the Crescent case, and we come last, but the Crescent case was decided and the Court's decision did not satisfy either party. It is a case in which they have a right to appeal to the Supreme Court direct, and both sides are now appealing, and four-fifths of the questions in that case, Mr. Justice, are exactly the questions involved in this civil case before you here, and so our suggestion is in line with the policy of the Government, up until the recent announcement that this case was immediately to go to trial—in line with letting the Supreme Court tell us in the Crescent case what the law is with reference to these chains, and the duty of these courts in a case in general which my friend said is identical to this—why shouldn't [fol. 611] there be a substantial continuance here? Secondly, I see no damage done to the Government with reference to it. There may be three or four subpoenas for in-

dividuals, but that passes into insignificance when it comes to the greatest question of doing justice in this case.

I just made a notation what we must do. We must respond to the subpoena. Where we are going to get the time to do it, I don't know. We must try to resolve our help shortage. For instance, let me show you how keen that is. We have one man who deals for our circuit with the distributing companies. There was a time as alleged in my friend's complaint, we could go to the distributor and get 52 pictures, a whole year's supply, in one deal. We can only get not to exceed three now. That means that the man in charge of our distribution section, of our contracts with the distribution section, the producers, must every single day take his hat and shoes in his hand and get the grist from the mill of these pictures, just like our wives go down [fol. 612] and get the daily grist of rationed foods at the store.

He is vital to this case. He is the individual who must sit here and discuss these individual witnesses who claim in the distribution end that there was a conspiracy between us and the distributors which worked to the disadvantage of the witness who is here. He must help us. Just a word and I am through. We must prepare our own stipulation. We must examine the Government stipulation and then we have one more trouble, and that is your order in which in very specific terms you said "I want something done and I want the defendant to understand he has got to do it." That is we have to sell some ten or twelve moving picture houses while Mr. Schine must sit at the right hand of some lawyer trying to pinch hit in this case. Somebody must be at our head office to dig out the records. That must be Mr. Schine. Nobody else can do it. The whole burden that falls on us is insuperable.

Here is the suggestion I have. I make it without any disrespect to the Court, because the Court knows its own busi- [fol. 613] ness. Why may we not have a general postponement of the trial of this case until an indefinite time in the future upon our agreement, and, as definite as your Honor wants to make it, that we will immediately commence conferences with the Government to ascertain what can be put into this case by way of stipulation, and, your Honor, that is so much more important to us than the Government, because the Government does not know what the question of expenses means. With us every witness and every day that

is saved is the saving of money. We are more interested in cutting expenses than the Government is. After we have worked together maybe a month and endeavored to cut this down with every stipulated fact, then why not have a pre-trial conference and crystallize what has been done and then, if your Honor please, when the evidence is there and we know the witnesses and know what is in this case, then set this case down for trial, with a proper length of time between the date of the pre-trial conference and the date [fol. 614] of trial so that both parties may look forward to it.

I am not here for the purpose of excusing what my friends say is inexcusable negligence on the part of the defendants for not doing something during these two years, but I am frank to say, your Honor, with fully as much experience as my brethren, if I had had before me this record of the attitude of the Department of Justice, I never would have believed, as I did not when I came up on the plane, that there was any idea this case could be tried like an automobile accident or a suit for divorce.

This is a most intricate case, and the man who tries it has to sweat, as Churchill said "Blood and sweat and tears," in order to get the case tried, and it must be from the stand-point of the defendant, because it is what he has, what he has made. It is his family property. He wants to save it.

I say again to your Honor, I have no standing before your Honor as to why you should temper the wind to the shorn lamb because of me, but if I am to be of any help to this [fol. 615] defendant, if I am to have counsel's right to come in and handle his case, I must have the time and so must any other lawyer. If I pass out of this case, and it would be a travesty simply because of a technical situation that the 19th of May was supposed to be the trial date with a case as important as this, whatever may be the shortcomings of Mr. Schine in not being prepared, it would be a travesty to force the case to trial unless the defendants were in possession and presented to your Honor which is the true story of what this is about.

Consequently, my suggestion is that that be so arranged that we might look forward in this case to the question of a trial of this case in the early fall. I say that because the summertime is coming, and you people who live up here in the Buffalo area have a little more fortunate summer than we do in Washington. As one gets older he looks forward

toward having a few weeks off in the summer to regain your pep, by getting out of the hot climate and getting away for a few weeks. Have it set down after the procedure I have referred to in the early fall. Maybe by that time the [fol. 616] Big Five and the Government will have resolved their differences. Maybe early this fall the Supreme Court may decide the Crescent case when it comes to this, and maybe a large part of your Honor's duties would be eliminated. There has been an order entered. We will be perfectly willing to complete the record with one if your Honor wishes, and so far as your two-year order is concerned, under which we cannot buy any more theaters, and we are inhibited by the injunctionary effect of the order of doing certain things, and we would have no objection to a full continuance of the binding power of that order. We would be willing to subject ourselves to any other order that seems in your experienced discretion proper to protect the interests of the Government. The one thing we plead for here is, despite what my friends may say is our negligence, now being in the strong hand of the chancery side of this court, give us that which your Honor may not feel we deserve, but which we feel is necessary if justice is to be done in this case.

[fol. 617] Mr. Froelich: I represent the defendant Columbia Pictures Corporation, one of the so-called Little Three, and I speak on behalf of them and perhaps also on behalf of the United Artists, Universal, the other two. We are in this position: The Government has entered into a stipulation on May 4th, dismissing these Little Three from this case. We had originally been co-defendants in the New York action three years ago. We signed no consent decree, and had never been a party to any consent decree. We were defendants in the Tennessee suit. The suit was tried. Columbia was dismissed out of the suit, so was Universal. There was one finding against the United Artists. The appeal does not affect the United Artists. We have no interest in the appeal. We are out of that suit. We were defendants in the suit brought by the Government in Oklahoma, and four or five months ago we went down on a pre-trial hearing and the Government said it was willing to dismiss these Little Three out of the case. As a matter of [fol. 618] fact, these three defendants, and the small producers and distributors should not have been brought into these suits. They own no theaters. They are not

in the exhibition field. They confine their business to the production and distribution of pictures. The Government realized, possibly too late, after we had been put to tremendous expense in preparing ourselves for trial in the various suits, that it was perhaps an injustice to these three small defendants that they should be dragged into these cases throughout the United States and made to defend themselves, and the Government concluded that these three defendants should be out of all these suits, and lately out of this suit. I see no reason, and I confine myself solely on this argument to the motion made by the Government to dismiss the United Artists, Columbia Pictures, Universal Pictures—I see no reason why either should remain in the case. No useful purpose will be served by keeping us in, but we will be put to great expense. It means spending money, having witnesses available, having lawyers—I don't have to tell your Honor these suits involve terrific expense [fol. 619] to every party in the suit, and I urgently request before your Honor makes any disposition of counsel's motion for an adjournment—before you do anything in the case, I earnestly request that your Honor grant the motion, in which I concur, to dismiss these three little defendants out of the case at this time so that we do not have to spend all kinds of money to prepare ourselves for a trial either at the present time or at a future date.

Our records have been available to the Government. They are up here in Buffalo. All of the records of the entire territory which is covered by this trial, and the Government has had access to them. I have no objection if Mr. Schine wants access to them, he can have them. It does not make any difference to us. The plea that we must remain in this case because Mr. Schine wants to examine our records, I think, should fall on deaf ears, because that is not made in good faith. There is no reason why we should be put to the expense of remaining in the case so that he may save, [fol. 620] as he says, part of the burden of defending himself. We owe him nothing, and I think it comes with ill grace from the defendant Schine to request that these defendants remain in this suit and incur this tremendous burden of expense because it suits his convenience. I think that we have the right, and the Government has the right—there is no counterclaim here, nothing involved by the controversy in which the Government alleges a conspiracy on the part of originally nine or ten defendants. The Govern-

ment said "We are going to leave five of these defendants out," two years ago. No objection was made. Those five defendants were discharged. Now the Government says "We want to leave the three little defendants out," and I think, your Honor, we are entitled certainly to the same gracious consideration from the Court as the Big Five obtained when they were let out of this case, and these three little defendants who can ill afford it, should not be kept in this litigation when no useful purpose could be served to anybody in the case.

[fol. 621] The Court: What was there about this statement of the attorney in January with reference to this case?

Mr. Clagett: I have not seen any official letter or statement in any departmental file, and I don't recall seeing any. He is passing on what appeared in the trade journal. My own understanding is that while there have been continued discussions, progress has not been made, and it is contemplated that that suit will be tried.

The Court: What does he say? Does he purport to quote the Attorney-General?

Mr. Richardson: Suppose you read it.

Mr. Clagett: This is a Washington date line, it merely states: "The Government's suit against Schine Circuit will be suspended until a decision is reached with respect to the divorcement of the theaters owned by the five consent decree companies, it was learned here today." It says: "Recent conversation between representatives of the Company and the Department of Justice officials—it mentions—"It is the idea of the Assistant Attorney-General Tom C. Clark that [fol. 622] the whole question of the theater acquisitions should be wrapped up in one package with a delay applicable throughout the industry." That back in January, 1944.

The Court: This year?

Mr. Clagett: This year.

The Court: From what counsel states, this was ordered to be put on the calendar. What was the condition of the order? What was the language of the order at that time?

Mr. Clagett: Of the temporary order?

The Court: The order two years ago.

Mr. Clagett: "The trial of this case is postponed until May 19, 1944, and all proceedings herein are suspended until such date, except as hereinafter provided," which, of course, related to the——

The Court: I understood counsel to state that it was to go on the calendar. That seems to be not quite in accord with the order itself.

Mr. Clagett: I would not think so, sir.

The Court: Counsel calls attention to the subpoena duces tecum served on them only this last week.

Mr. Clagett: I was going to advert to that question, [fol. 623] your Honor.

The Court: Go ahead.

Mr. Clagett: Those subpoenas were the identical subpoenas which had—subpoena duces tecum which was served at the time of the original sitting back in March of 1942. There were very minute changes in about three respects only, I believe, so that when they were put on notice that the Government expected to try this case, when Mr. Wright argued the motions here, they had at least anticipated, or should have anticipated that the Government was going to rely upon the subpoenas that it had previously served. The material, we assumed, of course, was gathered together back in March of 1942, and in addition to that we had taken the deposition at Gloversville and identified all the contracts involved. The defendants have had, it seems to me, in this case, the best discovery that could be expected. We have filed numerous bills of particulars. We have answered certain interrogatories, and we have furnished the defendants with photostatic copies of all of this material which we [fol. 624] took from the files of the major distributors, so there is no ground to the plea that they do not know or cannot have access to the material that is covered by the subpoenas, with respect to the major distributors. They have all of that.

Of course—I see Mr. McCarthy here—he has been of counsel in this case since about May, 1943. I can certainly appreciate Mr. Richardson's position, his personal situation. It may be difficult, but we are trying the Schine defendant's, and this suit has been pending since 1939. I hesitate very much, your Honor, to go any further with respect to the discussions on the Paramount case, except to say that while one official may have made some announcement, it would not necessarily be binding on the Department, especially where changed circumstances have intervened, where these talks have not produced the results that they thought would be accomplished, and it is my understanding that that case will be tried. As I understand it,

[fol. 625] those arguments were gone over on the motions here in March or April.

Mr. Richardson: You mean the Big Five companies?

Mr. Clagett: With reference to the Paramount case.

Mr. Richardson: That is the Big Five companies?

Mr. Clagett: Yes, sir. They were certainly gone over at the time of the Crescent trial, but if we are going to advert to any parallel situation in the motion picture industry or make any comparisons, let it be with the Crescent case. We have not halted from proceeding in this case on account of what was happening in the Paramount case. We have not halted our attempt to prepare and try the Griffith case in view of the relief that the Government obtained in the Crescent case. We might be charged with dereliction if we failed to prosecute this case. The independent exhibitors here are in the same situation they were there, and relief was obtained in that case.

The Court: That has not been argued.

Mr. Clagett: That has not yet been argued.

The Court: When will it be argued?

Mr. Clagett: It will be argued certainly not later than some time this fall, I believe. From the standpoint of [fol. 626] preparation this case has been pending all of this time. Mr. McCarthy is in the case, and the Government feels that the Schine defendants have a large staff of lawyers, I mean, in their own legal department. The material has all been organized. It was organized presumably in March, 1942, again in May, 1942, and this plea now —well, it may be embarrassing to Mr. Richardson—this plea for delay is one that the Government must oppose, and we will not agree to any such continuance, your Honor. We believe this case should go forward now. We have witnesses here before the Court. If it is desirable to continue for a short period for the pre-trial proceeding, that is one thing, but to go over to the fall is an entirely different thing. My thought is that we might start now and see what we could accomplish in the pre-trial proceeding and go right from that into at least the beginning of the trial. We have witnesses that we can put on Monday or Tuesday. Let us complete a segment of the case now. It seems to me, your [fol. 627] Honor, that that is the only proper thing to do under the circumstances of this case. We have issued all of these subpoenas for a number of witnesses. Some of

them are here; others are on their way. The Government case is going to deteriorate by the passage of time. Certain witnesses have died since May, 1942, several others are ill, and if we get their testimony at all, it will have to be by deposition. Certain witnesses that we have available now are in the army. We know that we can get them. We may not be able to get them two weeks from now, a month from now or next fall.

With reference, your Honor, to Mr. Froelich's remarks about dismissal of Columbia with the other two remaining distributors, one of the objects of the Government at this time in dismissing the Little Three was to simplify the trial and save time, and I believe that the question of their dismissal is covered by your recent opinion with reference to the motion to dismiss the suit because the Big Five had previously been dismissed as parties defendant.

[fol. 628] So far as the documents and files of the Little Three are concerned, we would have, and have had, as far as I know, the same arrangement with the Schine defendants as we had with the Big Five, and that is, to furnish them photostatic copies of the material which we took from their files.

My thought is, your Honor, in conclusion, that we respectfully submit the order dismissing the three remaining distributors be granted. We believe that material ground can be covered right now if we can start into the question of stipulating facts in evidence, and the Government would like to immediately get into the trial of the case upon a determination of what we are going to accomplish now in the pre-trial proceeding.

STATEMENT

Mr. Schilz: May it please the Court, supplementing what my colleague, Major Clagett, has had to say, your Honor, I would like to be heard briefly, just a minute. I was very much interested in Mr. Richardson's remarks concerning the fact that no rule has been laid down for guidance of the [fol. 629] motion picture industry at any time during the long history of litigation with the Government through the Anti-trust Division, in the enforcement of the Sherman Anti-trust Act.

I can recall back in the days when I was an assistant secretary to Colonel Donovan, and when I was secretary to

John Lord O'Brian, that even then, 12 or 15 years ago, the Government was attempting to break up this competitive control in the industry of the retail outlets for the theaters by the wholesalers and producers. I can recall even at that time in the Benderop case, the first leading case that went to the Supreme Court of the United States, the rule had been laid down for the guidance of the industry. I can recall later in the First National case and Paramount case, which was argued in the Supreme Court very ably by Mr. O'Brian, a further rule was laid down, and the Supreme Court said in that case even though there were two economical concepts in this country, one which afforded a certain amount of collaboration and combination in industry and another one which afforded free enterprise, the Supreme Court must adopt and carry out the rule of free enterprise inunciated in The Sherman Act and that that should be the rule in the motion picture industry.

[fol. 630] In dealing with these affiliated circuits and chains, the larger chain organizations in the industry, later in the Interstate Circuit case, in the State of Texas, there was a situation on all fours with the Schine case in practically all respects. There a large controlled circuit of theaters have obtained certain favors and preferences from the eight distributors in the motion picture industry. That is to say, from Fox, from Loews, from Warner, from Columbia, from Universal, acknowledged in preceding cases as practically the sole supplier of product for use in this industry. In that case the Supreme Court laid down and adopted a rule which should stand as a guidance for this industry. The Government, in further explanation of efforts in carrying on a policy which was not confined to one political ad-

[fol. 631] ministration, but a policy which has been the policy of the Sherman Act since 1890, brought these circuit suits, and brought the suit against the distributors in the Paramount case.

There has been a great deal said here about the Paramount decree, but I want to point out to your Honor that in that decree, the distributors gave up certain valuable rights which they had had prior to that time, or rights which they contended were valuable to them. They gave up the right or the practice that they had in the industry of selling a whole season's pictures in one block, and they entered into a decree that they would at a subsequent time during the period of that decree simply sell their pictures

in blocks of five, and they would give the exhibitor the right to preview the picture. They also gave up another valuable right, or another practice, which they had maintained in the industry, or I should say they entered into an agreement to do something which had not been done prior to that time, and that is, to give the exhibitor the right to [fol. 632] arbitration of clearance or protection situations, wherever the exhibitors signified a desire for arbitration of that situation. Those were situations entirely apart from these circuit situations. In the circuit situation we have a case of a large circuit controlling 165 theaters in the Schine case, or theaters in 165 towns. Many of those towns are closed. There is no competition, and the Schine chain—it has been stated in the complaint in this suit and has been pointed out to the Court many times in many arguments before this Court, that the Schine chain by reason of its power in those closed situations is enabled to go to the distributors and obtain preferances and priorities. So that here we have a conspiracy, whether the distributors are defendants or co-conspirators, where the Schine chain is the hub of the conspirators, and the spokes of the conspiracy radiate out to the distributors.

Now, if your Honor please, this case was filed on August 7, 1939. I was amazed when I first started to study the [fol. 633] pleadings here at the ramifications of the pleadings, the fact that every means of discovery has been exhausted by the defendants. They have had far greater detail of discovery than is usual in any other civil case. By that I mean the Court in all fairness to them has given them every discovery which the Court felt they were entitled to under the circumstances. Having exhausted all the discovery the case came on for trial, first being set for January, 1942. On motion, or on some representation to the Court by the then counsel for the Schine chain the case was reset for March 3rd. The case at that time was again reset for April 28th. I was particularly interested in examining the transcript of April 6th, 1942. At that time Mr. McKay, general counsel of the Schine chain, who had very ably represented them in this court, and as I understand it is still the general counsel—is that true, Mr. Richardson?

Mr. Richardson: He is house counsel for the Schine Theaters.

Mr. Schilz: Appeared in this court with Mr. Wiseman and Mr. Byrne of New York City. He appeared on three occa-

[fol. 634] sions, first, to oppose interrogatories—rather to propose that the Court grant certain interrogatories against the Government; second, to oppose the Government's request for admission of facts, and third, to ask for a stay of sixty to ninety days on the ground that new counsel had been brought into the case on behalf of Schine just two weeks previously. Your Honor observed at that time, I believe, from reading the transcript, he did not feel the bringing in of new counsel or associate counsel into the case was a good ground for postponement, but that to suit the Court's convenience because of another trial or another term or other work of court, the suit would be set over until May 19, 1942. In the meantime counsel had also appeared in court previously and requested a stay of the case on the ground that the Crescent case was pending in Tennessee, but the position that the Government took at that time and has at all times taken in this case is that because of the public interest and the welfare of the independent exhibitors who [fol. 635] have constantly complained to the Department of Justice, this case was a matter of public import that ought to be tried, and that is the position the Government takes today.

Now, if your Honor please, the case came on for trial May 19th. At that time a stipulation had been entered into in which Schine, while reciting in the stipulation that it did not admit any guilt or any violation of the Sherman Anti-trust Act, nevertheless undertook to give some of the relief which the Government had been pressing to get in this situation, that is, the order provided for the disposal of sixteen theaters. I think your Honor observed in his opinion of May 4th, while the order did provide for the disposal of sixteen theaters, only five have been disposed of to date, and that it does not appear that any unusual diligence has been exercised by the defendants to dispose of the balance.

The Court: Six have been disposed of, have they not?

Mr. Schilz: Six theaters in five situations—I beg your Honor's pardon. In the meantime, the complaining wit- [fol. 636] nesses have been contacted. They advise us their situation is not any better. It is growing progressively worse. Some of the same counsel are in this situation now, who have been in the case for more than a year. Mr. McCarthy sits here at counsel table. His appearance was noted in this case early in May, 1943. Mr. Friedman of New York had a telephone conversation with me about two weeks

ago in Washington with reference to the proposed stipulation, and at that time he suggested that he may file certain motions. I pointed out to him because of the Court's opinion previously on the same subject matter, there wasn't good ground for the motions, and they have not been filed, but, at least, Mr. Friedman expressed interests as one of the counsel for the Schine chain. Mr. Goodwin appeared at the Department of Justice during the week of May 8th, Clarence N. Goodwin, who has been in the case so far as I know since May, 1943, and he made certain representations to the department, so that we have a situation here, [fol. 637] while one counsel is now being brought into the case, there are other associate counsel who are skilled and experienced men and who have been in the case longer than a year, who are thoroughly familiar with all the preparation of this case, and who have probably themselves examined the five hundred photostats that were taken from the major film distributors, and that if your Honor please, brings me to another subject. Referring to the Big Five and the Little Three, there is a tendency to underplay or place a minor connotation on the position of the so-called Little Three in the industry. None of these people are little in the ordinary sense from the standpoint of operations or financial control or financial ability. The smallest of them has assets running into millions, thirty or more millions, and the larger over a hundred million. I realize it has been said in anti-trust cases that size only is not a criterion to determine whether or not industries have been or are able to violate the Anti-trust Laws, but the Supreme Court has said that a size, when combined or when viewed from [fol. 638] the demonstrated abuse in the past as has been demonstrated in this industry indicates the potential danger in future.

We have in this situation a large theater circuit which is in a peculiar position to obtain priorities and preferences from these distributors and has obtained them. The Government has, as has been stated, two years ago made extensive preparation in this case. It has been at all times ready to go forward. We are met today with the same situation we were met with two years ago, and that is a request on the part of the defendants who themselves have been on notice—the defendants, if your Honor please, the clients in this case have at all times been on notice that this case was pending, but on the eve of trial they come in with new

counsel without any formal or seasonable notice with this Court or with us.

COLLOQUY

Mr. Richardson: May I intrude on the Court just a moment? I want to refer to my friend's suggestion as to the release of one or more of the Little Three. I appreciate the statement made by my old friend that they are only [fol. 639] little in comparison, but will your Honor reflect upon the propriety of a prosecution that dismisses from the case the three biggest people in the case. My friend says the Government dismissed because it was too bad to put these big corporations to the trouble of defending the case, and my brother over here says that there was a conspiracy between the distributors and the Schine people to defraud the public, and yet the distributing end of it, the biggest end, walks out of here with the suggestion on the part of my friend that it is too bad to bring them in and make them go to the expense when they are charged in the same bill, and the Government still insists that they are co-conspirators. They are not innocent, and when the Government says, when my friend says he has his files here and we can see them, I appreciate if I can have time to see them, but most of the files represent the Big Five, and where are they? Are they going to hold their arms out to us?

The Court: They are out of the case now, let us not discuss that.

[fol. 640] Mr. Richardson: They are out of the case, Mr. Justice, in so far as you can render a judgment against them, but the complaint stands naming them as conspirators, and their admissions, if your Honor please——

The Court: The point in mind is, they are out.

Mr. Richardson: The point is under the evidentiary rule, any admissions made by a co-conspirator are admissible against all persons in the conspiracy. Despite the fact they are out of the case, the Government at will can take out the files it has examined, which presumably they have culled, as to what helps the Government's case. You know and I know they have not taken anything out that will help our case. All of those, once a conspiracy is established, become admissions of ours.

We have four hundred people in our employ in the army. We are going to be hard set in an individual case, in Smithville, to bring the young man there who handled the moving

picture situation to testify here, but the difficulty is not the ultimate proof. It is the time to get the proof together, so [fol. 641] that when Mr. Clagett says all they wanted to do here was to simplify, and they simplified by letting the main malefactors go, it is simplification in name only. I want to read one sentence from this innocent subpoena duces tecum (quoting from subpoena duces tecum).

It is an enormous job to intelligently answer that subpoena duces tecum, and we ought not to be hurried in answering it.

The Court: Counsel calls attention to the fact some subpoena was served a few years ago.

Mr. Richardson: I cannot argue with him on it. I was not here then. I have not seen that. My friends tell me there was a subpoena served, but because of the negotiations between the parties no particular attention was paid to it. I accept to a certain extent criticism for that, that during those two years they were not enough psychic to see this split in the Department of Justice, but I say it is a remarkable thing, if your Honor please——

The Court: I don't know about the authenticity of such a statement. There is nothing here to support the authen- [fol. 642] ticity of that excerpt from that magazine. Some reporter may have stated that to be a fact, which might not be so.

Mr. Richardson: I don't think anybody at counsel's table will deny that was Mr. Clark's statement.

The Court: I rather gather, perhaps, if some statement was made, the records of the office or something like that would show it.

Mr. Richardson: I will be prepared if you regard it as important to further identify——

The Court: I regard it as important to a certain point.

Mr. Richardson: I will be glad to furnish sworn testimony of people who talked to Mr. Clark about it.

The Court: Of course, the matter was set down for trial apparently at this time, rather than put on the calendar.

Mr. Richardson: Mr. Justice, let me apologize to you for my statement. I read this once, and the statement simply was that the trial of this case is postponed until May 19, 1944, and all proceedings herein are suspended until said date.

The Court: These other motions that were made here, when was that, a month ago, when Mr. Wright was here?

[fol. 643] Mr. Schilz: March 20th and April 10th.

The Court: He stated here in the presence of Court and counsel that this case would go on at this time. That is a month and a half ago, Mr. Richardson.

Mr. Schilz: The first hearing was March 20, and the second one was April 10.

Mr. Marcus: April 10th I was in court with Mr. Wright, and I recall your Honor asking that question, and Mr. Wright at that time turned to counsel and stated definitely that we were prepared to go on on this date.

The Court: Of course, there is something to be stated in favor of some agreement on a stipulation of facts which undoubtedly will save a great deal of expense and trouble and narrow the work of the trial a great deal. Now, the question is here how you can get at that. I had a thought in mind that perhaps in view of counsel's statement here, we could make more progress, at least in the next month, even though we had to discontinue for a little time. We have a term of court in July, anyway, so that would be out of the picture. You have engagements until June, so that [fol. 644] perhaps there may be some way to proceed in part.

Mr. Richardson: I feel certain, your Honor if we do it properly, if we can occupy our attention between now and the first of June on the preparation of a stipulation of facts, and not until those statements of facts are completed should your Honor be called in on a pre-trial situation. You cannot sit here day after day while we hash over these facts and say "Put it this way, put it that way."

The Court: I glanced over here at the proposed stipulation, and so much of this can be answered, and the answers to others—data can be easily procured.

Mr. Richardson: We have a stipulation of facts that we intend to produce.

The Court: You have depositions and interrogatories?

Mr. Clagett: Yes, sir.

The Court: I suppose those would throw some light on the stipulation.

Mr. Clagett: I cannot conceive that it would take so long to dispose of that document as far as this stipulation, as [fol. 645] to those facts and evidence are concerned. A great part of it is based upon information which is gathered here and there in the scattered answers in the interrogatories, and the defendant's legal department and other counsel is well prepared, and can advise with Mr. Goodwin

as to the accuracy of the facts that we want to have stipulated.

The Court: A great many of these, apparently, would not take any time.

Mr. Richardson: You have to apply the stipulation to the individual statement there in order to get an accurate statement of the date and time for the different places, and it takes a considerable time. There are numerous statements.

The Court: As far as I have seen these, nine out of ten of them would not seem to be controversial at all.

Mr. Richardson: Has your Honor the subpoena there, also?

The Court: It seems most of these things that I have seen there could be answered within an hour.

Mr. Clagett: I believe most of them could, your Honor, if they want to simply say the facts there are true. They know.

[fol. 646] The Court: I can't force you to stipulate.

Mr. Richardson: Has your Honor examined the subpoena?

The Court: I am talking about this stipulation now. There is nothing in there as far as I have seen but what you could say whether you agree or do not agree in a very short time, and that could be taken care of.

Mr. Richardson: With reference to the Viv Theater, Mr. Justice, many of those statements in that stipulation which look so innocent—we want to add to that stipulation of facts, additional facts, that we can ascertain by looking at our files relative to that contract in that place, and we want the time to do it.

The Court: Would the contracts of purchase, or contracts of leases—would that have any materiality here?

Mr. Richardson: Your Honor, all these individual cases stand on their own feet. They are different people, different representations alleged to have been made. They are all part of this devious conspiracy that the Government asserts.

The Court: I assume that there would be a certain stipulation that you would ask them to make, I assume that is [fol. 647] true. As far as this standing alone, most of that seems to me to be matters that you can quickly answer or not. I cannot go any farther than that. I haven't the power to compel you to stipulate.

Mr. Richardson: We will answer them as quickly as we can.

The Court: Ma-y of them as I have glanced at them here now are merely formal proof.

Mr. Richardson: Suppose you add to that, Mr. Justice, the scope of the subpoena duces tecum as to the correspondence, and so forth, that also should be enveloped in these statements of facts preparatory to a pre-trial conference, we ought to have an opportunity to examine and get all of these papers and letters and correspondence and inter-office memorandum and find out just what we have, and then contact our friends and see whether we can get a stipulation that will avoid us the trouble of taking our time and the Court's time and the witness' time to identify them.

Mr. Clagett: If Mr. Richardson does not know what those papers are like, there are people, Mr. McCarthy and the legal department of Schine knows what they are. They must have set them aside long before the original trial date [fol. 648] in March, 1942. I do not see how that is really an excuse for taking any long period here to——

The Court: What was your deposition? What proceedings were taken? A deposition was taken of some of the Schine officials by the Government?

Mr. Clagett: Yes, that was simply to identify the documents.

The Court: Does that go into the question of these documents concerned with this subpoena?

Mr. Clagett: Yes, sir. The contracts that are covered by that subpoena were to a large extent identified in that deposition and picked out and looked at. They saw them at the same time we saw them and they were marked, and the papers, sir, generally speaking, relate—that is, other documents and letters, and so forth, relate to a considerable extent to the towns and situations in a parallel way with the contracts themselves.

The Court: Towns and situations, what do you mean by that?

Mr. Clagett: We have dealt in this case in furnishing the answers to the bills of particulars and to interrogatories [fol. 649] largely with towns, and with certain distributors with respect to that town——

The Court: You mean by Schine?

Mr. Clagett: Yes, sir.

The Court: Were there interrogatories answered as well as bill of particulars?

Mr. Clagett: Yes, sir.

The Court: On action of the Government a deposition was taken. Was there any bill of particulars sought by the Government at that time?

Mr. Clagett: No, sir, Columbia obtained a bill of particulars.

The Court: I am speaking about Schine. Was there any preliminary action taken aside from taking depositions?

Mr. Clagett: No, sir. They did file a motion. Altogether, I believe, there were six bills of particulars that were filed and with three different sets of interrogatories.

The Court: Did Schine interpose interrogatories?

Mr. Clagett: Yes, sir, those are the ones I am speaking of.

The Court: Whose deposition did you take?

Mr. Clagett: One of the Schine officials with reference to identification of all these contracts included in that subpoena.

[fol. 650] The Court: Was that taken at Gloversville?

Mr. Clagett: Yes, sir. I have this proposal to suggest, that to give Mr. Richardson ample leeway, we might attempt to proceed with the stipulations of facts for the period of one week, upon the condition that the trial of the case commence at the end of that week.

The Court: Why can't we proceed?

Mr. Richardson: Mr. Justice, I said a moment ago when I was discussing the matter, I am prepared, as soon as I can get home to get glasses and sit down with my brethren, to endeavor to get stipulations of facts in shape. I don't want to delay. I think it is going to take longer than he thinks. It always has in the other cases I have been in. I am perfectly willing to do it, but I have still one more difficulty. It is wholly personal, and I have used up all of my personal favor with the Court by this time, and that is that the month of June is taboo as far as I am concerned. If we should get our stipulations of facts, it will take most of the time until the first of June. If I might be left free for June, it is possible we can hurry up this trial, but I [fol. 651] still repeat what I said, if what my brethren say is correct, that the Crescent case is a model for this one, why should we have to try this case when the disputed law that is in the Crescent case is going to be before the Supreme Court to be decided probably before your Honor

decides this case. It does not seem sensible. It seems to be Mr. Clark was right when he said we will hold all these things in abeyance until we get our ruling, and if my young friend is correct, that we have plenty of rules, then why is Justice at the present time bargaining and conferring and working with the Big Five, so-called, to settle the Big Five case. If they are going to try that case, why not try it? It is the main case. A decision in that will decide practically all that is in our case. Why should we go to the expense and trouble of a trial that will take two or three months, when there is a framework, counsel says, already in the Crescent case, which is on its way to the Supreme Court, that will settle the precise issues in this case?

[fol. 652] Mr. Schilz: If your Honor will bear with me for a few remarks. My answer to Mr. Richardson, and for your Honor's information, is that in so far as a rule of guidance is laid down, that has been laid down by the Supreme Court in the Interstate Circuit case, and that the Crescent case, although it is now pending, and is a situation on all fours with this case, will probably be determined by the rules laid down by the Supreme Court in the preceding cases in this industry, this is not the first time the Department of Justice has attempted to divorce theaters from either producer control or circuit control. I could take a syllabus of cases in the industry back 15 years which shows various actions of this sort.

Mr. Richardson: Why haven't you pressed the Big Five companies?

Mr. Schilz: In the Fox Theater situation for a time, the theaters were put in a trusteeship for divorcement. As to this trade paper article, that is not authentic. That is some reporter's statement of what his view is of what might be going on. That is not evidence.

[fol. 653] I want to advert a moment to this discussion about the breadth of this subpoena. My associate said that subpoena was filed, and with about three or four minor changes is the same subpoena filed previously in this case, and it is my understanding the defendants have gathered together all that material. The distributors have brought here themselves, some of them have brought here the material which was previously gathered together, and which I understand they kept separated. What we thought could be accomplished in a pre-trial conference, and I think counsel could tell us very soon, and it is something that they

must tell us in the presence of the Court, whether or not they would stipulate the authenticity of documents subpoenaed.

The Court: What?

Mr. Schilz: The authenticity of documents subpoenaed from them, these documents that have been set aside, inter-office communications and contracts—if they will stipulate that the documents are the authentic documents of the Defendant Schine and of the major distributors, both as to [fol. 654] contracts between Schine and the distributors and contracts between the distributors and the few remaining competitors of Schine in this area, we can save a great deal of time, and when we have a witness on the stand and he said "Why, there was a contract such and such a date," do we have to put the Exchange manager on the stand, or the distribution head of the Company to prove the authenticity of that contract, or are they willing to say to us as to these documents named in this subpoena, "We will agree they are authentic, and they are the documents we set aside before. They are now set aside and are there.

The Court: How were they brought into the deposition?

Mr. Schilz: I am not thoroughly familiar with that deposition, but as I understand it, a great many contracts were marked for identification at Gloversville, and I also understand that photostats of some five hundred pieces of correspondence and contracts were made, one copy furnished the Department of Justice, and Mr. McKay stated to this Court on April 6th, 1942, that he had seen a copy of each [fol. 655] of those and had personally read them.

Mr. Clagett: I would like to make one more statement in connection with the trade journal announcement about what Mr. Clark said. It seems to me that thing is right in the teeth of what the Department has shown its intention to be. We are not bound and we are not following what is in that trade journal, but we are trying to proceed with this case, and the action is proceeding in the Griffith case.

Mr. McCarthy: If you will remember, when Mr. Wright was here, I offered to put Judge Goodwin on the stand to testify in a conversation with Mr. Clark, Mr. Clark had told him the Schine case would be behind the Big Five case, and Mr. Wright did not dispute that that statement was made by Mr. Clark.

The Court: I do not recall the statement in that connection. I do recall the offer to produce Mr. Goodwin. That

I thought related to, as I recalled it, some agreement made earlier in July when the extension was granted.

Mr. McCarthy: No, your Honor, it related to the conversation at the time of this newspaper article that Judge [fol. 656] Goodwin had with Mr. Clark.

Mr. Marcus: I am not quite certain what that had reference to, but I do recall Judge Goodwin making certain statements as to what Mr. Clark had told him with respect to the acquisition of the Liberty Theater. That was an entirely different motion, and I believe, without being certain, that it was in that connection he was willing to testify.

The Court: There was correspondence on that.

Mr. Schilz: That case was outside and not part of this case, and the calendar sitting in New York may be entirely different from the calendar sitting in this court. We all know the calendar in New York sometimes runs months.

The Court: There ought to be some understanding in your Department about these matters one way or the other as to what is to be done.

Mr. Richardson: We do not contend our brethren are bound. We simply say we have been deceived by it.

The Court: Of course, that is overcome by a statement made by Mr. Wright that the case would be tried on the date fixed. You had notice. Of course, this subpoena duces tecum, it seems to me, ought to have been served earlier [fol. 657] unless it is all covered by previous research as pointed out here.

Mr. Clagett: That one that was served late, I don't know how that happened. It is one of several of the same identical subpoenas which were served upon various corporate Schine defendants and the personnel.

The Court: It was the same subpoena, but served on different named defendants, you mean?

Mr. Schilz: Yes, sir. There are, as I understand it in this case, seven Schine corporations.

The Court: When was the first of the identical seven subpoenas served?

Mr. Schilz: The first one we have a notation of or a return on was served on Schine Chain Theaters, Cleveland, Ohio, May 10th. The one as to Schine Enterprises was returned, because they apparently do not have a New York City address at the present time, and I am not able to advise your Honor as to the return on the others.

The Court: How were they served?

Mr. Schilz: Served by the marshal in that district.

The Court: You spoke about some return address. I thought perhaps you served them by mail.

[fol. 658] Mr. Schilz: No, sir.

The Court: I think we had better go along with the examination of these proposed stipulated facts this afternoon, and then take a short recess.

Mr. Clagett: If it please the Court, is there any reason why we could not have a disposition now of the Government's motion to dismiss?

The Court: I will take care of that when I come to it. You say your trial commences the 12th?

Mr. Richardson: Yes, it commences the 12th. Of course, I have to be there four or five days ahead to prepare it. June is a bad month.

The Court: I think we ought to make some progress in this matter from now on in some way. I don't know how much we can get into the matter. It does seem to me we could at least begin the trial without any handicaps, so far as the defendant is concerned, or handicapped by reason of your late appearance in the case—of course, that I appreciate—I think the defendants were advised in plenty of time in order to get competent counsel. They should not have left it for the last week, because this was set down [fol. 659] for a definite date. I do not think the Government expects to conclude this case this spring, but they feel they ought to get started, and I think we ought to do that.

Mr. Clagett: As I mentioned before, we have several witnesses in the room—there may be others. We know two of them are available now. We could put these witnesses on, and if we had a week or ten days—your date is the 12th?

Mr. Richardson: Yes.

Mr. Clagett: If we could proceed with this endeavor to stipulate these facts for a period of perhaps a week, and then get into the trial for ten days.

The Court: That would bring you into June. Ten days from today will bring us to the first of June.

Mr. Richardson: We have one holiday in there somewhere.

The Court: That is the 30th.

Mr. Clagett: Another thing is this: Our witnesses were all called here two years ago. I mean, they were subpoenaed and a number of them came, and now some of them are here and others are on their way. It is discouraging to

these witnesses to have the Government keep writing to [fol. 660] them that the case has been postponed. If we get started to use some of these witnesses, the witnesses will be in a different frame of mind about that.

The Court: You cannot accomplish much in a few days as far as that is concerned. As I look at the stipulation, I think you can approve the Government's stipulation this afternoon. There is nothing that I can see there to worry about. Are you prepared to go along the first of next week with any witnesses?

Mr. Clagett: Yes, sir.

The Court: Why don't you want to run one week, and then adjourn? I don't think there will be any difficulty as far as counsel is concerned.

Mr. Richardson: Of course, I don't know who the Government witnesses are, Mr. Justice, and I don't know what they will testify to. I don't know whether the facts they testify to are those subject to a possible stipulation of facts. I don't know whether they can be eliminated. If we had an opportunity to know what is proposed that they would testify to, possibly we would admit it. I cannot say "Yes" or "No", because, as I say, it is the blind leading the blind [fol. 661] in reference to that.

The Court: I am going to hold the matter until next Tuesday, and we will go along at that time for a few days, and, in the meantime, you can take this stipulation and you can advise the Court what you want to do with it.

Mr. Richardson: What was the Court's remark?

The Court: I say, go along with some of the testimony next week. I don't see how we can run any longer than next week. We could start Monday afternoon.

Mr. Richardson: I want to be clear in my own mind. Does your Honor then feel that the trial would pause at the end of next week?

The Court: Would that be satisfactory? We can try it later in the summer after July or August some time.

Mr. Clagett: That is the unfortunate part of it. Pausing in June brings us to the middle of the summer, and the Government certainly would prefer, if it could, to go right through with the case. We are up against the proposition that Mr. Richardson has raised about his presence in this other case.

The Court: I think we can run two weeks commencing [fol. 662] next Monday and see how we get along anyway.

Mr. Richardson: This occurs to me. Could we have an adjournment over the week-end, over Decoration Day?

The Court: Yes, I think so. That would bring us to Tuesday.

Mr. Richardson: Because I would like to get home.

The Court: That would be two weeks, practically. You have this stipulation, have you not?

Mr. Richardson: I have glanced at it.

The Court: In the interim, whatever additions you want to make to it, or whatever proposals you have, do it as best you can now. You have most of this material all assembled.

Mr. Richardson: Does your Honor contemplate that we are to commence taking testimony on Tuesday?

The Court: Yes.

Mr. Richardson: Then there is utterly no chance whatever for us to prepare any statement of our own stipulated facts between now and Tuesday.

The Court: Can't that be submitted later?

Mr. Richardson: I don't know how. It just looks to me if we do not have our stipulation of facts at the time we start to trial, we will never get them.

[fol. 663] The Court: So much of this ground has already been covered—so much of the foundation has been laid by the interrogatories and deposition, and the preparation made before.

Mr. Richardson: If your Honor would let the question of the pre-trial hearing on which you are to crystallize the stipulations of facts, run until a week from Monday?

The Court: All right.

Mr. Richardson: Then let us take a full week, commencing with that Monday, for counsel's witnesses that he has on hand, and maybe we can get a couple of more days in May with reference to it.

The Court: I thought you were going to propose postponing action on the stipulation for a week, but in the meantime, go on with the testimony. The testimony would not be directed to matters in the stipulation.

Mr. Richardson: Of course, they will be. They will be producing a witness that comes from a certain town and predicate his own testimony——

The Court: I am speaking about the stipulated facts that will not have to be proved.

Mr. Richardson: That is true, but we have to make some [fol. 664] examination of those facts, and that is only the Government's stipulation. What are we to do about this subpoena duces tecum? What time are we to have to furnish all those papers and truck them over? It would take three or four truck loads to get them here.

The Court: I don't know how much we will get into that at the outset.

Mr. Richardson: If the furnishing of that material could go over to the June vacation, why, then the defendants probably could get hold of that stuff and bring it over during June and have it here.

Mr. Clagett: We want to accomplish all that we possibly can in the way of stipulating facts and evidence, and I don't know what they have in mind, but here is a proposal, that we devote as much as a week to determining what we can accomplish and then going into the trial the following week, which would give us a full week of trial, I think, would be satisfactory to the Government.

The Court: To what purpose are the witnesses directed to, that you propose to call next week?

Mr. Clagett: We would go into the Ohio situation, that is, [fol. 665] the competitive situations, and possibly Kentucky. They would be the first situations we would go into, but, of course——

The Court: You mean you would go into the situation through what witnesses? Would they be individuals?

Mr. Clagett: Yes, sir, primarily individual exhibitor witnesses, and we would make an extensive effort, of course, to get these two individuals that we have in mind who are in the army, to have them come in. One of them does not relate to any Ohio situation.

Mr. Schilz: May I ask the Court, that if it develops during the course of the hearing of that testimony we need certain foundation facts as to these particular exhibitor localities, the Government, I assume, would be permitted to read from defendant Schine's answers to interrogatories, statements as to these particular localities as foundation material?

The Court: I suppose so. It would be competent, would it not?

Mr. Richardson: We are not going to do a thing to delay this, definitely.

The Court: We will try to make what progress we can, that is all.

[fol. 666] Mr. Clagett: I would like to reiterate that the Government is willing to go along with Mr. Richardson on the idea of having this first week devoted to pre-trial, that the testimony be started the following week. I understand that is the proposition that he would like.

Mr. Richardson: It is not that I like it. I hate it intensely, but beggars cannot be choosers.

Mr. Clagett: We will go along with you on that.

The Court: The difficulty with that is that there will not be much time after that, if we have in mind counsel's commitment, that is all. However, if that were done, Mr. Richardson, could you proceed the following two weeks, commencing the 31st—that brings it to the day after Decoration Day?

Mr. Richardson: It makes it exceedingly dangerous for me, because I have to prepare that other case. Why can't we take this testimony up to Decoration Day, which will get my friend's witnesses out of the way?

The Court: That is what he proposed to do if he took testimony next week. He would have to take testimony next [fol. 667] week. You have one week before Decoration Day. Today is the 19th.

Mr. Richardson: Decoration Day is on a Tuesday. Why couldn't we do this? The practical way would be to make what progress we can next week. We cannot sit on Decoration Day, I assume, these days, because they might play the "Star Spangled Banner" and stop the trial. I would be very glad to start taking testimony the 31st and run four days into June. Does your Honor sit on Saturday?

The Court: Sometimes we do, more often not.

Mr. Richardson: The Federal Courts ordinarily do not. I don't think that the week of the 22nd is going to be wasted. I think we are going to save time.

The Court: If you will say you will go on the 31st to the 9th, we will fix it that way. I think you better go on that way and see how we get along. All right, I will hold this matter. This matter should be held until the 31st of May. In the meantime a stipulation will be agreed upon as far as you can, and that is all there is to do on this matter. I think this motion dismissing these three other defendants should [fol. 668] be allowed subject to a condition that you be per-

mitted to have access to such documents of these defendants as are relevant to the issues claimed. I see no reason why I should not follow the same rule as was done so far as the other five are concerned. The situation is comparable in my judgment.

Mr. Froelich: There is no objection to that. I accept that condition.

The Court: They could be subpoenaed, anyway, could they not?

Mr. Froelich: I think they could get them as a matter of right, if they asked for them and applied for them.

Mr. Richardson: We don't want any more matters of right that will make us work in the next few weeks.

The Court: Make it subject to that condition, about the documents.

Mr. Richardson: Are similar documents in your possession from all the Big Five?

Mr. Clagett: We have photostats. We have furnished you with photostats.

The Court: Prepare your order in that way.

Mr. Schilz: I understand your Honor to suggest that the [fol. 669] representatives of the larger five distributors make the same arrangement——

The Court: Surely, if I have the authority to do that.

Mr. Richardson: It must be a voluntary thing on their part, because they are not in the case.

Mr. Schilz: I believe their representative is here. I don't know his attitude. I think they have no objection.

The Court: Of the three companies?

Mr. Schilz: No, the representative of the larger five distributors, Mr. Caskey.

The Court: Which one do you represent?

Mr. Caskey: I am here representing the 20th Century-Fox Film Corporation, Paramount Pictures, Loew's, Warner's, and R.K.O. We are not defendants in the case. The Government has subpoenaed substantially every document in our files and substantially every executive of our Company, and I am up here for the purpose of facilitating the production of the papers and the witnesses for the convenience of the Court and the convenience of counsel for both sides.

The Court: Well, we will leave the matter in that way, then. Get your order. It should be conditioned to producing [fol. 670] such documents relative to the issues.

Mr. Marcus: Could you set a time for counsel to confer with you for the order to be entered in your opinion on these motions which were argued?

The Court: What is the trouble with that?

Mr. Marcus: It is simply we have not been able to get in touch with counsel to enter into any agreement. I myself contacted Judge Goodwin last week, and at that time he said he did not think he was coming down at all to participate in the trial, and it is merely a matter of getting together with counsel.

Mr. Richardson: You can do that on Tuesday.

The Court: The Court does not require you to agree. The Court will make its order in accordance with the decision. Both parties can submit an order, but it is better to agree on it.

Mr. Richardson: We will look over his proposed order on Tuesday.

The Court: There is one difficulty I see in the order—difficulty for me as to the terms of the sale. I mean by that, this: The original order was specific and tied down to [fol. 671] certain things. I don't think we should tie them down to that now. I mean by that, while I have some hesitation, I expressed myself not believing the Schine people made every effort to sell all these theaters, I gave them the benefit of the doubt to a certain extent, and I think that the former order should be qualified so that any proposed purchase should be——

Mr. Clagett: We have drawn a proposed order which I will be glad to give Mr. Richardson.

The Court: All right. The Clerk calls my attention to some other motions here. What are those motions?

Mr. McCarthy: There are two motions, one which is made by Mr. Murphy as his counsel to have your Honor change the ruling which you made some time ago in regard to the prices of the theater. The other is the motion that we filed to dismiss the case. If your Honor granted the motion to let out the Little Three, I presume your Honor will deny that motion?

The Court: That follows. What about the Murphy motion?

Mr. McCarthy: If your Honor please, this whole matter [fol. 672] was before you. You made a ruling. Now he apparently is trying to get your Honor to change the ruling in reducing the price of the Viv Theater in Corbin.

The Court: How does his offer conform to the original direction?

Mr. McCarthy: It is not an offer. It is just a motion to set the price at a different figure.

The Court: Lower than that?

Mr. McCarthy: That is correct, and the motion has previously been argued before your Honor at length, and you denied it.

The Court: There was considerable negotiation with him, as I recall. You will appear Monday on that?

Mr. McCarthy: Yes, unless your Honor wants to adjourn it until a week from Tuesday and put it on, whenever we start the trial—a week from Wednesday?

Mr. Marcus: May I say something? We are not appearing for Mr. Murphy, but Mr. Murphy's attorney——

Mr. McCarthy: He is here.

Mr. Marcus: Is he here?

Mr. McCarthy: Mr. Murphy is here.

The Court: Who is your attorney, Mr. Murphy?

[fol. 673] Mr. Murphy: Mr. Hoyt, Big Stone Gap. He intended to come here Monday.

The Court: The only question is whether it would be better to take care of it Monday.

Mr. Murphy: I will let him know. Would it be better if you waited until this trial started?

The Court: I don't want to spend time to interfere with this trial. It would either have to be taken up Monday or a week from tomorrow.

Mr. McCarthy: If we are going to attempt to work out a stipulation of facts here, I would not like to have to be here to urge this motion Monday morning.

Mr. Marcus: May I suggest that possibly Mr. Murphy can have his motion argued at the time we call Mr. Murphy as a witness in the case, if that is all right.

Mr. McCarthy: That will be perfectly satisfactory to us, your Honor. Is that all right with you, Mr. Murphy?

Mr. Murphy: Yes.

The Court: I don't like to mix the things together. We could hold the matter generally and agree on some date.

Mr. McCarthy: Can't we hold the motion generally until [fol. 674] some date Mr. Murphy is called as a witness?

The Court: I think you should agree with counsel on a date. I don't want to inject that question into the trial of this case—this motion. All right.

[fol. 1] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA,

against

SCHINE CHAIN THEATRES, INC., et al.

Trial before the Honorable John Knight, Justice, presiding, at the United States Court House, Buffalo, New York, commencing Wednesday, May 31, 1944, at 10 o'clock a. m.

Appearances:

Robert L. Wright, Esq., Special Assistant to the Attorney General; John F. Clagett, Esq., Special Assistant to the Attorney General; Harold L. Schilz, Esq., Special Assistant to the Attorney General; Albert Boggess, Esq., Special Assistant to the Attorney General; Philip Marcus, Esq., Milton Kalas, Esq., in Behalf of the United States.

Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., Of Counsel for Defendants.

[fol. 2] COLLOQUY

Mr. McKay: Your Honor, I want to present Mr. Richardson's apologies. He has been having transportation difficulties getting up from Washington. We expect him here some time this afternoon.

The Court: Are you ready to proceed?

Mr. McKay: We are not asking any adjournment on that score.

I would like to file a request for an admission of facts that were served upon the plaintiff on Friday. We are not pressing that at this time, but I want it as part of the record.

Your Honor has before you this morning as the first order of business a motion made by the Schine defendants for an order compelling the plaintiff to serve a second amended complaint so as to make the pleadings in this action conform to the state of facts arising out of the dismissal of the complaint as against Columbia Pictures Corporation, the

United Artists Pictures Corporation, and Universal Film Exchanges, Inc., commonly known as the Little Three. These parties were dismissed as a result of a motion argued before your Honor on May 19th, which was the day set for [fol. 3] the trial of this case.

Before I discuss this motion I would like, with your Honor's permission, to clear the air a little bit. Unfortunately it seems that during the past six months certain personalities have been introduced into this case, and there has been a certain amount of acrimony for which none of the gentlemen sitting with me at this counsel table are responsible, and I want to say to your Honor to Counsel for the plaintiff that as far as Mr. McCarthy, Mr. Rogers, Mr. Schine, Mr. Homans, Mr. Antevil and myself are concerned, we like these gentlemen as men and we respect them as adversaries, but when they come into court with a theory such as they are advancing here we regard them as the prophets of a vicious, pernicious, insidious ideology, the adoption of which by this Court would eventually have the effect of ruining private enterprise, and that is the basis upon which we are meeting them here.

Mr. Wright asked me yesterday if I was going to take the [fol. 4] onus of refusing to make certain stipulations which he wanted. I told him that I did not think there was any onus, that this case is going to be fought out to the limit on every point. This industry which we are here representing took thirty years of hard pains-taking labor on the part of Mr. Schine and his brother to build up, and if it is going to take six months to prevent it being torn down, why, unfortunately, we are going to have to spend the six months, but we are going to spend just as long as necessary. I told these gentlemen, and I will say to your Honor, to paraphrase the language of a very famous statesman, none of us here have come into this case to preside over the liquidation of the Schine Circuit.

Now, this motion was served on the plaintiff on Thursday and I stated to Counsel at that time that we were ready to argue it immediately. It was at their request that it was set for argument today. The reason that we are ready to argue it so promptly was because the question has already been passed on by your Honor.

[fol. 5] Your Honor will recall that about three years ago this complaint was dismissed as against the other five distributor defendants. That dismissal was the result of a

consent decree entered in the Southern District of New York in an action entitled United States against Paramaun. As one of the side arrangements between the Government and these Big Five, they dismissed the case in the Southern District, they dismissed the case in Nashville, United States against Kresan, they dismissed the case in Oklahoma, United States against Griffith, and they dismissed up here in this case only as against these five major distributors, known as the Big Five.

The trial period provided for by that consent decree ran out last November and nothing has happened since that time except a lot of negotiation, and the Big Five are, in my opinion, openly flaunting the Government, refusing to make any concessions whatsoever. They were not forced to dispose of any theatres, such as we have been. They were not [fol. 6] even prevented from acquiring new theatres. As a matter of fact, there is a proceeding before Judge Goddard, where Mr. Wright came in and tried to get them to divest themselves of about eighty theatres that they had acquired after the entry of the decree and Judge Goddard refused to order them to do anything about it. Well and good. When your Honor dismissed in this case I made a motion before your Honor to require the plaintiff to file an amended complaint. Your Honor granted that motion, and for the purpose of refreshing your Honor's recollection I hand you here a copy of the order.

The Court: I remember it.

Mr. McKay: They did file an amended complaint. It was then necessary for us to move for a bill of particulars with respect to that amended complaint because the amended complaint was not clear. That motion was granted in some respects by your Honor, and the bill of particulars was filed, and we then pleaded to the amended complaint, and in that answer which we filed then we set forth a defense [fol. 7] which did not appear in the original answer, a defense of unclean hands, in which we set forth what we consider the unholy alliance between the Government and the Big Five as a result of it. They were eased out of this case, leaving Schine and the Little Three to defend against the allegations of illegality which the Government still insisted applied equally to all parties.

Now, on the verge of trial, on the very day set for the trial of this case, they came into court and having stipulated with the Little Three that they would dismiss them from

the case, asked the Court to dismiss and the Court, over our objection, granted that motion. There was no explanation as to why this dismissal was granted. In the case of the Big Five, they at least had the excuse that they had gotten a consent decree from them. They never got a consent decree from the Little Three. These fellows consistently refused to negotiate even with the Government for a consent decree. They participated in the original negotiations for [fol. 8] about a month and then they walked out. There is no explanation on the part of the Government as to what, if any, change of circumstances has taken place since they dismissed as against the Big Five so as to require them or proceed then to dismiss the Little Three. They just came in and dismissed.

I think that possibly we might be entitled to draw the inference, in fact, I think we are certainly entitled to draw the inference that after five years of investigation the Government has found that it hasn't got any case against the Little Three, that they were not conspirators, that we never conspired with them and, therefore, it made up its mind that they would take them out of the case. If that is the fact we are entitled to know it. I might suggest that the reason this dismissal was granted was because Mr. Froehlich, counsel for Columbia had filed an application for ninety days' adjournment which, while I very respectfully suggest I think there was a fair chance that your Honor would have [fol. 9] granted it. I might suggest that they dismissed the Little Three because after their experience in Nashville, when Mr. Forehlich and Mr. Rafferty, two of the ablest and best informed motion picture lawyers in the business, were sitting at the counsel table assisting the exhibitor defendant in the defense of the case. They thought it might be just as well not to have them here. In any event they are dismissed.

Now, what is the situation with which your Honor is faced? The pleadings in this case as we come into court this morning are incomplete. You have no issue to try here. You have got a situation which, in my knowledge, is unique. I don't know of any case—I won't say there isn't any,—but I don't know of any case involving the motion picture industry where charges of violation of the Sherman Act were brought where the only defendant in the case is the exhibitor. I cannot recall any case where at least one dis-

tributor was not made a party defendant and did appear [fol. 10] before the Court on the trial of the case.

The business of exhibition of motion pictures is purely a local matter. That has been held by the Court of Appeals here in this state in United Artists against Taylor and this plaintiff is coming into court here with the only defendant in the case, an exhibitor who does nothing but exhibit motion pictures.

Interstate Commerce has been introduced in these cases by reason of the fact that there has always been a distributor defendant. That is not the fact here. Therefore, before we proceed with the trial of this case we are entitled to have a pleading telling us what the theory of the plaintiff now is, wherein do they claim we have violated the Sherman Act.

Your Honor has already ruled on that point, and I do not think I need to press it any further.

Mr. Wright: If the Court please, I think your Honor already understands that the principal difference of opinion [fol. 11] between Mr. McKay and ourselves at this point relates to the question of whether or not we can actually get the case tried and heard and decided by your Honor.

In so far as Mr. McKay is concerned, he regards any move which we make in the direction of simplifying the issues or getting the case in such form that it may be heard and decided as virtual sabotage, as far as he is concerned. His interests lie in doing everything that he can to prevent a trial and decision of the case, and that is the sole purpose of this motion that has been made here.

I think your Honor can readily appreciate that simply by referring to what we went through before at the time that the other distributor defendants were dismissed. At that time he made a similar motion. The motion was granted. We filed an amendment complaint in which we set forth in detail our theory of the case to the effect that the principal defendants and the principal reliance was on the violation [fol. 12] of the Sherman Act by this group of exhibitor corporations that are collectively designated as the exhibitor defendants, that the case charged conspiracy among those corporations to violate Sections 1 and 2 of the Sherman Act by monopolizing theater operations in these various communities and preventing competitors from competing with them in licensing films. We also charged that these exhibitors had conspired with each of the so-called major distributors, five of them theater owning companies and the

three that were just dismissed here, non-theater owning companies, for the purpose of discriminating against their independent competitors in the licensing of the films of those various distributors.

After that amendment complaint was filed a motion for a bill of particulars was made to further elaborate the theory of the case and your Honor granted that motion in some respects, and in response to your Honor's order, we filed a bill of particulars with respect to the amended complaint which set forth in detail precisely what our theory [fol. 13] was as to the relationship between these exhibitor defendants and the eight major distributors, and here is what he said in that regard: "For further and better particules of the allegations of conspiracies and combinations and contracts between the Schine defendants"—those are what I have referred to as the exhibitor defendants, the possessors of the theater operating monopoly that is under attack here,—"and the defendant distributors and the nondefendant distributors contained in paragraphs 45 and 46 of the amended complaint." That is the defendant distributors were the three and the non-operating defendant distributors were what I referred to as the Big Five, the theater owning companies. "Plaintiff states as to (a) as to each such conspiracy, combination or contract between each of the major distributors, whether defendants or nondefendants, acting separately, and the Schine defendants. (b) And it claims that each such conspiracy, combination or contract, still in existence, except in so far as the illegal con- [fol. 14] tracts alleged in paragraphs 45 and 46 consist of licensing agreements alone in which case, said contracts ceased upon their completion."

Now, that states the theory of the case — it affects these defendants, stated it then and states today. There has been no change whatsoever in any allegation of this complaint as to what the Schine defendants have or have not done. The only effect that the dismissal of the three distributor defendants who remained in the case, the only effect that the dismissal has had, is simply to prevent us from obtaining the release in this suit against those particular defendants. Our relief, of course, here will be entirely confined to relief against the theater operating monopoly possessed by the Schine defendants which is the subject matter, the principal subject matter of the suit.

As I understand it, although I was not here at the time,

an explanation was made to your Honor for the reason of the dismissal and that was that it was to shorten and [fol. 15] simplify the trial of this suit, inasmuch as these other defendants were subsidiary defendants and I might further add that, of course, there the problem that we have with them is a nation-wide problem which has been cast in litigation form in the complaint that is on file in the suit at New York where all of the major distributors are defendants and, of course, that complaint embraces all of the issues that are involved here as to those distributors plus any others and, as far as we are concerned in dealing with what we have charged our abuses peculiar to the distribution of files as practiced by these major distributors on a nation-wide basis, obviously the best forum in which to obtain that relief is the New York suit where we are not restricted to what they have done in particular localities, as we are here, but they are nation-wide operations.

Mr. McKay said that he thought this was the only case in which we had proceeded solely against an exhibitor group possessing monopoly power. That does not happen to be [fol. 16] the fact. We did the same thing that we did here in the Griffith suit pending in the Western District of Oklahoma for precisely the same purpose. There we had similar issues, that is, a group of exhibitor corporations who had monopolized theater operations in Oklahoma and Texas and New Mexico, and we dismissed these same distributor defendants from that suit for the same reason so that the issues might be confined to the determination of the legality or illegality of that theater operating monopoly, and the only questions of relief which that Court, as well as this Court, would have to deal with is the question of what would have to be done with respect to the theater operating monopoly possessed by the distributor defendants.

I think it is clear under these circumstances that, of course, defendants may be dropped out of a lawsuit at any time during the trial, and there is no occasion, of course, for any repleading of the suit. The situation now is no different than what it had been had we kept these people [fol. 17] in the case, had we dismissed them in the course of the plaintiff's case or had they been dismissed at the end of the entire case. In any event there wouldn't have been any occasion for repleading the issues and there isn't now.

The Court: You amended before.

Mr. Wright: We amended in 1941, yes, to make the pleadings conform to the dismissal.

The Court: How about it now? What do you say as to any change in the pleadings by reason of the dismissal of the Little Three?

Mr. Wright: There isn't any occasion for any changes in the pleadings whatsoever, as far as I can see, except a change in nomenclature.

The Court: How is the situation any different than it was before?

Mr. Wright: It isn't any different as far as the issues are concerned.

The Court: You amended before.

Mr. Wright: I say our prior amendment did take care of the only change in issues that was affected by the dismissal by any distributors as defendants in the case. The only function any amendment could perform now would be [fol. 18] simply a correction as to nomenclature. That is, I suppose if we were to make any amendment we would simply amend the complaint on its face to more accurately described these distributors, whereas, in the amended complaint you see the phrase repeatedly used, "the distributor defendant and non-defendant distributors." All that we would do now would simply substitute for that phrase the phrase, "major distributors", because there is no longer any distinction in description between the five distributors that were then dismissed and the three that then remained.

Now, all you have been dismissed and all are charged in precisely the same terms as separately co-conspiring with the various Schine defendants.

The Court: Did the amended complaint do any more than change the designation, the major distributors and individuals, other than the defendants? Is that all the change made in the amended complaint?

Mr. Wright: You are referring to the one we filed in 1941?

[fol. 19] The Court: Yes.

Mr. Wright: No, in addition—that was substantially the only change in the complaint, yes, was one of description, but, in addition, as I say, counsel then moved for a bill of particulars to have us elaborate.

The Court: Why did you amend at that time? Why did you amend then?

Mr. Wright: We amended in response to your Honor's order asking us to amend.

The Court: I was wondering whether the same reason would apply now as applied then?

Mr. Wright: There isn't any occasion now for restatement of the issues by dismissal of these additional distributors, because the issues are precisely the same whether you have three distributors as defendants or one distributor as a defendant, or eight distributors as defendants.

[fol. 20] The Court: It was precisely the same before you dismissed as to the original trial. The issues were the same, except the reference to the major distributors, were they not?

Mr. Wright: That is right. As far as I am concerned, the present complaint may be properly amended simply to make these descriptive terms more accurate by now referring to what we have previously called both non-defendants and defendant distributors simply as major distributors. That will take care of any change which will be required by the dismissal. But my point is that that is a change which can be made on the face of the complaint. It is the kind of a change that is made frequently during the course of a trial and the kind of an amendment which does not require any repleading at all, because it does not affect any of the issues which are being tried. It has no bearing whatever on the scope of the evidence that is to be offered.

The Court: The only question I had in my mind was this, the situation is just the same as it was before with respect [fol. 21] to the major five distributors, but as far as the necessity of amendment is concerned, although an amendment was ordered at that time, the situation is the same as to these Three as it was for the Five.

Mr. Wright: Yes, the same as to all Eight. They were all treated alike at that time so far as the charges of the complaint are concerned. That is, they were all charged as co-conspirators.

The Court: Do you think it is necessary to make any amendment?

Mr. Wright: I do not think it is necessary at all. I think for the purposes of clarification the complaint probably should be amended on its face to do such things as literally

strike out the names of Universal, United Artists and Columbia from the heading under "Defendants" and to make these descriptions more accurate by simply saying "Major distributors", instead of referring to them as defendants and non-defendant distributors.

I have prepared a copy of the amended complaint with alterations in red which I showed to Counsel the other day, [fol. 22] which I think is all that need properly be done by way of making the nomenclature used in the complaint correspond with the action that was taken in dismissing the so-called Little Three. It is an amendment which, as I see it, is purely formal and has no effect whatsoever on the issues.

The Court: Is your description right in the proposed amendment here? In Section 2 of the amended complaint there is a description of defendant and non-defendant distributors.

Mr. Wright: They are all described here, all Eight.

The Court: Why shouldn't they be described as distributors, major distributors?

Mr. Wright: The only purpose of using the term "Major" there is, if you will read further on in paragraph 22, we simply define that term as one which collectively describes the distributors which are described in the complaint. We simply say the distributors named and described above are sometimes collectively referred to as major distributors. That includes all Eight. It wouldn't matter whether you called them the X distributors or the Y distributors. [fol. 23] The Court: But in using the word "Major" you seem to make a distinction. If you left out the word "Major" that would be a better way to put it, it seems to me.

Mr. Wright: That I would agree would be completely accurate, but the only reason of using the term "Major" was to use a collective term which would refer to these Eight which are described in the complaint and exclude others.

The Court: How would that be done to properly raise the issue here?

Mr. Wright: I would say that could be done on the face of the complaint in accordance with your Honor's suggestion in this manner. Simply strike out the names "Universal Pictures, Inc., Universal Film Exchange, Inc., United Artists Corporation and Columbia Pictures" from

the part of the caption including defendants, and then the description of the defendant and non-defendant distributors which heads up Section 2 of the complaint would be changed to read simply "The description of the defendants and distributors", and then your paragraph 22, which now [fol. 24] reads: "The defendants named and described above in paragraphs 16 and 18 and 19 (those are the Little Three) are sometimes hereinafter referred to collectively as the distributor defendants, and the companies named in paragraphs 14, 15, 17, 20 and 21 (those are the so-called Big Five) as non-defendant distributors."

That paragraph should be changed to read in this manner: "The distributors named and described above are sometimes hereinafter collectively referred to as the distributors." And that takes care of that——

The Court: Yes, leaving out the word "major" you mean?

Mr. Wright: Yes, that is all. I am leaving that out all the way through and just referring to them as distributors.

The Court: You do designate them in paragraph 25, do you not?

Mr. Wright: In 25, that would simply read this way: "The distributors, viz: Universal Pictures, Universal Film, United Artists and Columbia Pictures." Just strike out the words "and the non-defendant distributors, viz", and just continue "Warner Bros., Vitagraph, Paramount Film, [fol. 25] Loew's, RKO and Fox", and so forth.

The Court: You would have to add those?

Mr. Wright: No, they are all on there. The only change you make in paragraph 25 is simply to strike out the word "defendants" after the word "distributors," so that it would simply be distributors, viz: Universal, Universal Film, United Artists and Columbia, Warner Bros., etc.

Then the only other change would be in the remaining paragraphs of the complaint, beginning 46, 47, 48, 49, 50 and 52, the phrase wherever reference to distributors appears is "Distributor defendants and the non-defendant distributors," all that needs to be done there is simply strike out "distributor defendants and the non-defendant distributors" and simply have a reference to distributors in each case.

The Court: Leave out the word "Major" in each case?

Mr. Wright: Yes, sir. Then your reference in each case where distributor defendants and non-defendant distribu-

tors now appears would simply be a reference to the distributors, and that completes any changes that are necessary to be made to conform the descriptions that are now in [fol. 26] the complaint to the dismissal of these three distributors as defendants.

Of course paragraph 5 of the relief prayed should also be stricken because that prays for relief against the distributor defendants and of course their absence from the suit precludes the granting of any relief as against them. That would follow as a matter of course. With those changes on the face of the complaint it is perfectly clear that the complaint accurately describes all of the distributors in the case, and there has been no change whatsoever in the issues made by the complaint and answer or in any of the matters that are here to be tried.

The Court: I suppose the defendants in their answer would be permitted to raise the same questions that they did prior?

Mr. Wright: They are free, of course, to raise any points of law or any objections to evidence. I assume that any further additional defenses that occur to them can be filed at any time, which are based upon this dismissal.

[fol. 27] The Court: What is your objection to that, Mr. McKay, if you were permitted to amend? I do not see any reason why we cannot go into the trial at this time, allowing you to amend to meet any issues, that is, as you amended before with respect to the Big Five.

Mr. McKay: Well, if your Honor please, I think that the discussion between Mr. Wright and your Honor proved the necessity for a further amended complaint much better than any argument that I can make. I am not clear now after listening to the discussion just what state the complaint will be in when it is amended. He says he showed it to me several days ago. The fact of the matter is that at 5 o'clock yesterday afternoon he held up that paper from across the room and says "Here is what I will do," and I could see some red lines on it and that is all I knew about it. It is not true that when he amended the complaint back in 1941 that all he did was to change some nomenclature. In the old complaint he had what amounted to a collective conspiracy between the distributor defendants and then be-

[fol. 28] tween the defendant distributors and the exhibitors. In the amended complaint that issue still was not clear, and that is why we had to move for a bill of particulars.

That complaint that your Honor holds now cannot be properly interpreted without a bill of particulars.

The Court: That was cleared up, was it not?

Mr. McKay: That does not clear up anything as to the Little Three.

The Court: It would clear up the same question, would it not?

Mr. McKay: Your Honor, we do not know. Let me make this clear to your Honor: This is not our fault that this question comes up now. They could have done this at any time. Why did they wait until the verge of the trial?

The Court: I do not think that the mere dropping of these defendants and the amendment in the phraseology *it is* deprives you of a right.

Mr. McKay: We feel that we are very severely prejudiced. We had every right up until the 19th of this month to expect, No. 1, that Counsel for United Artists and Columbia Pictures and Universal Film Exchange would be seated at the table with us actively contesting this case. We had [fol. 29] every right up until the 19th of May to expect that the principal executives of these companies would be up here in court with us helping us in the defense of this case. That has been taken away. Now I am not here to argue with your Honor whether they had the right to do it or not, because your Honor has ruled on that point, but I am saying we are not in here for the purpose of delay. There will be some delay necessitated but not much. But I say whatever delay is occasioned is the fault of these plaintiffs. Why didn't they throw out the Little Three when they threw out the Big Five? Mr. Wright, in answer to my suggestion that this is the only case of the kind where you have got the exhibitor defendants, mentioned the Griffith case. The Griffith case is not on the verge of trial and there is no immediate prospect it will ever be tried, that it will ever be brought to trial, although it was started before this case was.

The Court: Having granted the motion to strike out the Little Three as parties defendant I see no logical reason [fol. 30] why the complaint should not be amended to properly describe them. Whether they are parties does not affect the question of conspiracy, of course.

Mr. McKay: The complaint could be amended properly to describe the defendants and they ought to answer the same questions that we answer in the bill of particulars as

to the Big Five. They ought to answer that question as to the Little Three. In all fairness, in a case that is a serious as this, we should be given the opportunity to scrutinize the complaint and ascertain just how we should plead. I do not think your Honor will take that opportunity away from us. As I pointed out to your Honor, I have got a defense of unclean hands relating to the Big Five. I may want to plead the same thing, but I cannot plead that by discussion across the Bench with your Honor.

The Court: That will be admitted.

Mr. McKay: Then they should serve me with a complaint.

The Court: I do not think there is much use in spending much time on the question of the proposed amendment. The [fol. 31] only question is the change in designating the Little Three as conspirators instead of defendant conspirators. That leads to no confusion, leaving them out as defendants and calling them all distributors. That is a very simple, plain proposition, and I think the amendment should be allowed on the trial and you may be permitted to amend to raise the same issues which you did with respect to the trial when it was made.

Mr. McKay: The complaint having been amended, the rules provide for time to answer.

The Court: That does not always follow.

Mr. McKay: I think, your Honor, in this type of a case, in justice to us, we ought to be allowed a reasonable time to answer.

The Court: If there were different issues raised that would be another question, you would have that time, but it is just equivalent to striking out some parties to the action, that is all. There is no prejudice to your clients that I can see.

Mr. McKay: I should at least have an opportunity to look at the stenographic minutes and then to state to your Honor, after having studied those minutes, the respects [fol. 32] in which I desire to amend the answer.

The Court: Counsel has stated for the record the amendments, and I think he has clearly covered what they are. I wouldn't spend much time on that. I think you should be permitted to amend to raise the issues which you seek to raise.

Mr. McKay: Your Honor, the least that Mr. Wright could do, apparently—he knew what he was going to do and the least he could do would be to serve us with a copy of his amended complaint so that we can see in black and white

what it looks like, and we ought to be given a reasonable chance to put in an answer. Under the circumstances I will do it much faster than the statutory time, but I should have some time. I do not think your Honor is going to force us to trial without really knowing what the pleadings are.

The Court: It is not necessary to argue that point. You know what the issues are. There is no change in the issues here. It is simply striking out the three parties defendant and making the pleadings conform to such action, that is all. [fol. 33] It is as simple as it can be. If you were to be prejudiced at all you would be entitled to delay, but there is no reason for it here that I can see with these propositions.

Mr. McKay: I do not apprehend that a matter of a couple of days would be considered as delay, and that would enable us to start the trial of this case knowing where we are at, when this situation has been created by the plaintiff. If we were responsible for it I would say "All right, we have to take the consequences."

The Court: I think you magnify the proposed amendments here. If there was any material change that would be an entirely different situation, but as I see it there is not.

Mr. McKay: Without seeing the complaint, your Honor, as Mr. Wright proposed to amend it, I am not prepared to say whether it is serious or not, and I think I am entitled to it.

The Court: Are you ready to proceed with your witnesses, Mr. Wright?

Mr. Wright: Yes, your Honor, we are. We have them here waiting. Of course Counsel has known here for ten [fol. 34] days that he was going to go ahead here without these other defendants. I do not see any excuse whatsoever for not proceeding at this time when he has been fully advised what to expect on this day. We had witnesses before, as I understand, and he got a ten-day continuance at that time. Now they are here again and we certainly should not be kept around waiting another occasion simply because he wants time to make another frivolous motion or file some pleading that will raise some defense the nature of which has not been suggested.

Mr. McKay: I do not think there has been any motion made in this entire case that can be characterized as frivolous, and I might say what excuse has Mr. Wright got for not filing his amended complaint ten days ago when he made

up his mind to dismiss these people? He knew what your Honor's ruling was with respect to the Big Five. He knew that your Honor had held that under those circumstances it was necessary to file amended complaint. Why didn't he file it ten days ago?

[fol. 35] The Court: I think that should have been done, but at the same time the fact is they have not done it will not control my action.

Mr. McKay: Your Honor, I will ask you to do this: I will ask you to direct them to serve me with a copy of their amended complaint and I will undertake to file my answer within 24 hours after I get it. I think in all fairness I am entitled to that.

The Court: Is there any objection to proceeding——

Mr. Wright: If he wants a copy which has incorporated on its face the changes that have been read into the record we would be glad to give it to him right now, and if he wants to file an answer we do not object to his filing it in a reasonable time. He can have not 24 hours, he can have ten days, or any time, but we do object to a postponement of the trial of the lawsuit.

Mr. McKay: Your Honor, we are entitled to have the pleadings in this case in shape when we go to trial.

The Court: Of course Counsel stated for the record the amendments they proposed to make. He has stated that the [fol. 36] amendments conform to the statements he has made. That should be sufficient and we will proceed with the trial. Counsel has stated that it is satisfactory to him that you be given a reasonable time in which to answer, and the trial will continue.

Mr. McKay: I really think, your Honor, that once we get into the question of taking testimony we ought not to have to be troubled about what the pleadings are. We ought to have that matter settled first, and I don't like to press your Honor on this thing, but I am making this application very seriously. I think our interests will be very seriously prejudiced if we do not have an amended complaint with some opportunity to scrutinize it and to put in our amended answer.

The Court: No, I do not think so. I will dispose of the motion in that way. I will permit them to amend and serve the copy of the complaint. I do not think you will be prejudiced by this action. You may serve your answer in ten days.

Mr. McKay: They are first going to give me an amended complaint, are they not?

[fol. 37] The Court: Today.

Mr. McKay: That will not be a thing with a lot of red lines on it, will it?

The Court: No, it will all be in black. The amendments will be only just what Counsel has stated.

Mr. McKay: I assume, your Honor, that he will also clarify the record so that the same statements he made in his bill of particulars, with respect to the Big Five, will apply to the Little Three.

Mr. Wright: I expressly so stated.

Mr. McKay: That was in 1941, Mr. Wright, and we do not know whether you contend that this conspiracy is now continuing. There is nothing in the record to show that it is. I think that ought to be clarified. Your Honor so ruled in the other matter and I do not see that anything has happened here in Court to change the ruling.

Mr. Wright: We are, I assume, on the verge of an opening statement here, in which we will clarify, as far as we can, the entire theory of the case and how we propose to prove it. I think after we get through with that Mr. McKay cannot possibly be left in any doubt as to what we conceive [fol. 38] the issues to be and how we propose to prove them.

The Court: Just what did you seek in the bill of particulars?

Mr. McKay: In your Honor's opinion you say "The defendants ask the Government to state whether it claims a collective monopoly and conspiracy between the Eight major distributors and the Schine defendants, or whether it contends that there are eight separate and distinct conspiracies." And you ruled that we were entitled to that.

Then the plaintiff should state whether it claims that the five non-defendant distributors are still conspiring with the Schine defendants and, if not, when the alleged conspiracy ceased. It is important that the defendant be so advised in order to make the proper defense. Paragraph 45 states that the defendants have violated and are now violating the Anti-Trust Act, while paragraph 46 is susceptible of the construction that the conspiracy continued to exist to the commencement of the suit. The Court, however, has in mind, the connection between paragraphs 45 and 46, but [fol. 39] irrespective of such connection it seems to me that this inquiry should be answered to clear up any doubt.

That only related to the Big Five. We are entitled to the same thing with respect to the Little Three.

The Court: Will you state your contention for the record?

Mr. Wright: I will be glad to. I said it was already covered. As your Honor just heard Mr. McKay say, you asked us to state what our theory was as to the eight major distributors, and in response to your Honor's order we said this: "As to each such conspiracy, combination or contract, it claims the existence of a separate and distinct conspiracy, combination or contract between each of the eight major distributors acting separately and the Schine defendants."

It is charged that there is a conspiracy between the Schine defendants collectively and each distributor. That was stated then and that of course is still our position today. As to the continuation of the conspiracy we said this: "It claims (that is the plaintiff) that each such conspiracy (that is the separate conspiracies between the Schine defendants and each of the major distributors "the combination or contract is still in existence, except in so far as the illegal [fol. 40] contracts alleged in paragraphs 45 and 46 consist of licensing agreements alone, in which case said contracts ceased upon their completion."

Of course it is perfectly true that in so far as these franchise agreements are concerned, for example, you will recall that the temporary order that was entered in May, 1942, avoided those franchises, discontinued those contracts, so that in accordance with what is stated here there is no continuing conspiracy in so far as licensing contracts are concerned which have been terminated, and, we assume, of course, that during the period of our temporary order the order was obeyed. That is, that order prohibited, as you recall, the defendants from combining competitive situations and licensing film in dealing with any distributors. So that I should say it is clear from this statement and the entry of the order that the conspiracies that we rely upon between each of the distributors and Schine continued up to the date of the entry of that order on May 19, 1942.

[fol. 41] Mr. McKay: I am not sure whether I understood you, Mr. Wright. You mean they stopped with the entry of the order on May 19, 1942?

Mr. Wright: I presume so. The purpose of the order was, of course, to preserve the status quo pending the continuance of this suit, and I assume that the order was

obeyed. As it was the continuance of the conspiracies was not permitted by the order, of course, and I assume it didn't occur. But the evidence which we will offer will not go beyond that date. As we understand it, the situation was effectively, let us say, frozen or suspended as of the entry of that order, and our evidence will, in any event, be confined to the prior period. And that is what I assume he is principally interested in knowing.

Mr. McKay: I would say not, your Honor. I think that statement illustrates the very necessity for this amended complaint. He cannot come in here and say he assumes a certain state of facts exists. I am entitled to a plain, direct statement from the Government either that that conspiracy [fol. 42] is still in existence and requires the injunctive power of this Court to stop it, or that it stopped when he says he assumes it stopped back two years ago. I am certainly entitled to a plain, definite statement on that point.

The Court: His statement was that his proof will be confined to that period of time.

Mr. Wright: We certainly take the position that an injunctive provision of the Court is necessary to stop it.

Mr. McKay: May we have a short recess before we start to open the case?

Mr. Wright: I would suggest that we submit this order on this motion which your Honor heard. We have an order which we have agreed to as to form, although, as I understand it, both sides except to the substance of the order.

The Court: Very well, we will suspend for ten minutes.

(Short recess.)

[fol. 43] Mr. Wright: If the Court please, at this time I would like to simply make a fairly brief statement which I think would be of some assistance in following the evidence. I think the theory of the case has been discussed here so often that it would probably be superfluous to go over that again, but I do want to give your Honor some idea of how we propose to prove it and where we think the facts that are really in dispute lie.

We had hoped to present your Honor at the beginning of the case with a stipulation of the facts about which we felt there could not be any dispute. We prepared a stipulation which I believe your Honor saw last week and submitted it which dealt largely with the mechanics of film distribution and matter taken from interrogatory answers which had

been submitted by the various defendants and about which we thought there could be no argument.

Counsel for the defendants has been unwilling to make such a stipulation. He did indicate, however, that they would sign or agree to a less comprehensive stipulation. [fol. 44] So we prepared another stipulation which was more limited in coverage of facts and we have submitted that, but counsel has said that he wants additional time to study that, so we are not able to offer you at this time any completed stipulation.

As counsel pointed out he has served us with a request to admit facts and we have also given him a statement of the facts that he asked to have us admit, that we were willing to agree to, but that stipulation again has not yet been signed because counsel for the defendant wants an opportunity to study that. Nevertheless, even though these stipulations have not been executed, I think we owe your Honor the duty of telling you at this time what these facts are, the general nature of them, about which we do not think there can be any serious dispute.

Those relate to the general nature of the operations of these eight distributors who are involved here, the conduct and size and scope of the operations of the Schine defendants. These distributors as you know,—five of them,—Fox, [fol. 45] Loew, Warner, Paramount and RKO, those five all own theater chains in addition to being in the business of producing and distribtuing pictures, and they are perhaps what might be called the principal elements in the industry from the standpoint of size. The pictures which they made, up until the 41-42 season, at the time our consent decree in New York provided a new method of selling the pictures of those five companies, were sold in the same way as all other distributors, that is, at the beginning of those so-called motion picture seasons, which is a one-year period commencing about September first each year and concludes the succeeding August. At the beginning of each of these so-called seasons all of the features that the distributor planned to produce during the year period are generally offered for license to exhibitors and the customary license agreement was one which would include all of the features that were to be released during the annual period. These agreements were made, of course, before many of the pictures were even produced and as they were produced [fol. 46] they would then be released for exhibition through-

out the yearly period. Each of these companies would produce forty to fifty, sixty, features a year and arranged to release them at the rate of about one a week throughout the year so there would be a continuous flow of product from each distributor.

As I say, at the time of our consent decree to which those distributors were parties in New York in 1941, their method of distribution was changed by providing they would trade show all features before licensing. That would mean that they then agreed not to license any features until after it had actually been completed, and distributed to the trade. That was to abolish the previous practice which was known as "blind selling."

Since that time the five distributors have followed a practice of selling the pictures only after they had been completed and selling them in small groups of two, three or five or ten features, instead of the entire season's product.

However, the evidence in this case will be largely con- [fol. 47] cerned with the practice as it existed during the prior season, when the entire product was sold blind and block booked in the sense of a season product, being disposed of under a single license agreement.

The other three distributors, Columbia, Universal and United Artists were not parties to the decree and still pursue the same method of business which was in effect with all distributors during the period to be covered by the evidence. That is, the sale of pictures to be produced during the entire year, usually at one time, with the exception of United Artists. The United Artists really falls into still a third category, because it is only a distributor of pictures. Columbia and Universal produce as well as distribute films, but United Artists acts merely as a distributing agent for so-called independent producers and consequently they have a more irregular system of release and release fewer films, where, as these other companies, will have 40 to 60 features as year.

[fol. 48] United Artists would release anywhere from 10 to 25 and each of those films that they did release would be products of a number of different producers, so that in many cases they would make separate contracts for the films of these various independent producers and you have then in the case of United Artists a system of distribution which involved normally and customarily the sale of only a few pictures. That is, those of single producers at the

same time and without the same regularity of release throughout the year that the only companies maintain by virtue of their increased output.

Those I think are the most important distinctions between the eight producing companies to bear in mind in the course of the evidence as to how their product was distributed by the Schine and Schine's independent competitors.

All of these distributors have their principal offices in New York City. The production activities are carried on in [fol. 49] California. The distribution activities are all centered in New York and the actual mechanics of the distribution of prints occurs through the various branch offices of these distributors that are called film exchanges. Those that serve the area here involved are exchanges in Buffalo which serve the western half of New York. Those in Albany covering the eastern half. The Ohio towns are served out of Cleveland and Cincinnati and Columbus, and then the towns in Maryland and Virginia are served out of exchanges in Washington, D. C. The Kentucky towns that are involved here are also served out of Cincinnati.

The course of this business of distributing films is, of course, the thing that gives the entire business the interstate aspect and the basis upon which the Sherman Act has been so frequently revoked in the competitive products that arise in these industries. As I say, the films are produced in California. Generally, extra prints are made either there or in New Jersey. A certain number of prints of each film [fol. 50] are shipped out to the various exchanges and the manner in which the exchange makes the print available to the theater is somewhat as follows: Each exchange will be assigned, let us say, eight or ten prints of particular film and with those prints they may have to serve several hundred theaters. The result is that the print goes out of the exchange and is used by the exhibitor to run for the period of time specified in his contract, one or two days or a week; is then returned to the exchange for reconditioning or repair; sent out again to the next theater that uses it; and back to the exchange. Also in cases where some district may be short there may be a number of prints from one exchange to the other and the print is constantly in circulation between the exchanges and various theaters, as long as it is in use, and the physical movement of the film, of course, frequently crosses state lines, it inevitably does in the

course of its travels from the time the print is made until it is retired as unfit for further use.

The solicitation of contracts, of course, is generally [fol. 51] handled by salesmen working out of these various exchanges who call on the exhibitors and tell them what the company proposes to produce and usually takes an application for a contract, which is executed on the contract form itself and, as most of them use a standard printed form of licensing agreement and when an application is taken, the exhibitor simply signs such an agreement which has on it terms which have been discussed or agreed upon between him and the salesman, and the contract is then forwarded to New York City for approval. In all of these cases those applications are made subject to approval at New York, and the exhibitor never has a contract until he actually receives notice that the New York office has approved the application that he has submitted.

In the case of the circuit operators, such as the Schine defendants where the buying or the licensing of films for theaters over a wide area, and in this case theaters in five states, is concentrated in the hands of one or two buyers. Of [fol. 52] course the deals are generally made not with salesmen in the field, but with the buyer executives of the distribution companies, generally at New York, or at the headquarters of the exhibitor defendants. But in any event these films are licensed in each case under what is purported to be license contracts rather than contracts of sale, although the trade customarily refers to selling films to this exhibitor and the actual title of the film never passes, and the only agreement that is made is a license agreement which permits the exhibitor to show the film for a particular number of days and also incorporates the certain provisions with respect to clearance and run, and generally, admission prices.

The facts about this method of selling films on a so-called run basis are some of those that we were asked to admit and in so far as those facts are concerned, there isn't any dispute, of course, that the customary method of licensing films for exhibition in the area that is involved here, for that matter throughout the country, has been to make an [fol. 53] agreement under which a particular exhibitor is entitled to show a particular film for so many days and he has an exclusive privilege in a certain area for that time. That is first-run, if he buys a first-run. That means in the

area where the run is sold he has the exclusive privilege of showing the film during that time, and very generally coupled with these run provisions are what is called clearance or protection provisions which assures him there will be a certain lapse of time before anybody else has the privilege of showing this film after he gets through with it. That is an interval of thirty days may be provided for a second-run can occur in somebody else's theater in the same area.

I might say further that generally these run and clearance provisions are accomplished by minimum admission price provisions, again calculated to afford protection to the buyer-exhibitor. He may agree to show the first-run, let us say, at a 40-cent minimum admission price with the understanding that the man who buys the film thirty days [fol. 54] later will charge not less than 25 cents. His contract will specify that minimum admission price, and the third-run that gets it thirty or sixty days later will be required to charge, say, not less than ten or fifteen cents, so that the license structure of the industry is one that provides for these graduated series of runs of each film with varying clearances and varying admission prices and that is the way in which the distributor is able to secure the maximum revenue from the distribution of a particular film or print is, of course, by serving as many theaters as he can with successive runs all of which will bring in additional revenues. I lay stress on this method of licensing because the method of licensing that is characteristic of the business and customary in it is one which in itself is obviously of such a nature that there is a constant restraint of trade because every time a distributor makes a film contract with any exhibitor trade is restrained in the sense that the contract he makes with one exhibitor to some extent deter- [fol. 55] mines the terms on which that same film can be made available to other competing exhibitors. That is it will fix a run and give a clearance protection and provide admission prices which will to a great extent directly determine the terms on which the film can be played by the competitor. And, as I say, each contract that is made, of course, does restrain competition in that sense.

Now, we do not here attack those restraints as such. Whatever may have been the position originally this method of licensing films through clearance and minimum admission prices has become established in the industry and it is the way in which the industry operates and so long as those re-

straints are reasonable, as far as we are concerned, there clearly is no conflict with the Sherman Act. But when they are unreasonable, and it is when these restraints on competition are incorporated in these license agreements are used not for the purpose of protecting the distributor's copyright or permitting him successfully to exploit his film by securing [fol. 56] a maximum number of runs in the widest possible distribution of his picture, but when these license restrictions are used instead for the purpose of preventing one theater from competing with another exhibitor who has attained a monopolistic or dominant position in the industry, then the restraint that occurs is clearly an unreasonable one and one which the Supreme Court had unequivocally condemned in the Interstate Circuit case.

So that the inquiry in each of these cases where we are dealing with particular license discriminations or particular license agreements is not as we see it, whether there is a restraint of trade, because there always is a restraint of trade simply by making the agreement, but whether or not the restraint accomplished is an unreasonable one and that test of unreasonableness is, as we understand the law, to be determined by whether or not restriction is imposed by the distributor for his purposes in the course of normal competitive distribution of his film, or whether the restraint is one that is imposed by a dominant exhibitor for the purpose [fol. 57] not of serving the distributor's interest in securing a wide competitive distribution, but simply in serving the exhibitor's interest in suppressing and preventing theaters that compete with him from showing the distributor's film on a basis which will let them attract patronage from him, or, in other words, furnish him with active competition in the exhibition of the distributor's product.

The Court: Doesn't that be done by increasing the prices of the second and third runs, do you mean?

Mr. Wright: As an example of what I mean by an unreasonable discrimination, let us take the situation in the Interstate Circuit case. What happened there was that the first-run theaters in these certain Texas cities charged 40 cents admission price. They were all owned by the Interstate Circuit which is an affiliated circuit, affiliated with the distributor, Paramount. The next runs were also for the most part owned by the Interstate Circuit, the neighborhood runs, that charge 25 cents admission that got the second run of the picture, and then following them were the small

[fol. 58] independents who played third and subsequent runs, and who were charging a 15-cent admission price. That is the normal distribution pattern with runs in accordance with varying admission prices. What happened in that case, Interstate Circuit told the distributors at the beginning of one season that they would have to insist that any picture that played first run at 40 cents admission price could not be shown in those cities later at a price of less than 25 cents admission.

The Court: Either second or third run, you mean?

Mr. Wright: Or any other run. That is right, that they could not license at a lower price than 25 cents to any one else in the same city. These theaters which were competitive with those downtown first-runs and the distributors agreed to impose that restriction and so they did in licensing the succeeding product compel these independents who had been playing the late runs at 15-20 cents price, to increase their admission prices to 25 cents.

Now, of course, those contracts by which the 25-cent [fol. 59] admission price was established was perfectly normal contracts in themselves, the kind of a contract, license contract, that is made every day. But the Court said that in this case, in a case of this kind, where you impose an admission price, restriction of this kind, simply to protect these first-run theaters and Interstate's first-run and subsequent runs from competition, then you have not imposed and restrained changes reasonably calculated to protect your interests as a distributor, but you have simply abdicated your function as distributor and used your copyright as a means of suppressing the ability of these independents to compete in showing your films with theaters operated by Interstate because what was done when you say to these independents, "You have got to charge the same price, 25 cents, as Interstate subsequent runs are charging 25 cents for the privilege of showing later run of those pictures." Obviously, the only effect of that is to simply prevent the late run houses from successfully showing the films at all. [fol. 60] Of course, the same sort of discrimination may occur when you have houses charging the same admission price and you permit one to play well in advance of the other. Obviously the distributor in that case is not distributing his film on a basis where all of those who show it have an equal opportunity to compete. What he is doing

there is simply saying to one exhibitor that he may have the extraordinary privilege of a prior run without at the same time charging an admission price that is commensurate with it.

I cite those examples only to show the complex nature of the problems that arise in a system such as the motion picture industry comprises where you do use contracts which, in themselves, restrain the trade every time they are made and the only way in which those restraints can be kept on a reasonable basis is to assure that the distributors themselves making the contracts are not dominated by a dominant theater group in any particular area, such as Interstate [fol. 61] was in this group or such as Schine is in the area here.

Of course, the fact as to the physical extent of Schine's theater operations of course, cannot be seriously disputed. What they have is a circuit which consists of about one hundred and seventy odd theaters operated in seventy-five or eighty different communities that are scattered throughout New York, Ohio, Kentucky, Virginia and Maryland.

The kind of monopoly power that Schine has in this case and what we propose to show it has, is of a somewhat different nature than that that Interstate had in the Interstate case. There you had concentration of first and subsequent run theaters in the four principal cities of Texas. The towns in which Schine operates are for the most part towns from ten to twenty-five thousand in population, and in the great majority of those towns, I believe the figures as of the present are that in some fifty odd out of a total of seventy Schine operates the only theaters, the only motion picture theaters, in those towns, that is, those situations are what [fol. 62] is known as closed towns, that is to say if a distributor wants to get his pictures distributed in those towns he has one customer. That customer is Schine. He either makes a deal with Schine or he does not get any revenue out of those communities.

Now, the particular aspect of circuit licensing of film with this case deals is, of course, the application of the circuit buying power that arises out of the total license phase that Schine has available for any distributor.

The application of that buying power to the situations which the Circuit finds itself confronted with a competitor. We expect to show that the Schine Circuit as a whole, in terms of fairness in the film realm means to a distributor

up to $300,000 a year, That is what he may expect to get out of the circuit, if he sells the entire circuit. Of course, any particular individual competitor of which there are only a few will find in the Schine towns is only able to offer a distributor rental which is commensurate with what [fol. 63] can be gotten out of the particular towns, in his particular theater which may run $1,000, $1,500 or $2,000 a year.

Now, of course, it is perfectly obvious that no local theater operator, that is the man who has one or two theaters in a town can compete with any circuit operator, such as Schine unless he has an opportunity and the market offers what he can pay for films in his town against what Schine will pay for the exhibition of films in that territory.

The Court: How many are there, how many towns?

Mr. Wright: I should say as of today there are fourteen left where there are independent competitors. That would be about fifty odd which are closed or the ratio of closed towns to open or competitive towns——

The Court: You said there were how many altogether?

Mr. Wright: I said about seventy, I think, didn't I? About seventy towns altogether. Anyway, there are about four times as many closed towns now as there are towns in which there is competition. We have figures tabulated which we will offer you at a later time showing the extent [fol. 64] of this growth. Six years before the suit was filed when Schine was operating in thirty towns he had about eighteen closed and about twelve were open. There were only one and one-half closed towns as open ones, but the history of the mechanical progress of the circuit, what it acquired and when it acquired it, is not a matter in dispute. It shows the expansion which Schine enjoyed during the six years preceding the filing of the suit.

The Court: Of course, you are including the sixteen locations, that is, in your comparison?

Mr. Wright: That is right. I was using the date, as I recall it, prior to the entry of the temporary order, May 19th, which provided for the divestiture of sixteen situations of which six were divested.

In any event, the expansion which occurred simply meant a progressive elimination of the independent operators that were in the Schine towns. That is, this expansion was largely at the expense of what we call small, local, independent competition. That is, competition afforded by the

[fol. 65] one, two or three theater operators. And, of course, as far as we are concerned, as far as the Sherman Act is concerned, the Sherman Act does not at all require that any particular kind of an operator should stay in business. We do not contend that at all.

[fol. 66] What we expect to show here, in the course of presenting this evidence, is that the small, independent operator was never given an opportunity to compete with the Schine Theatres in licensing film and of course that inability to complete in getting films for this theatres left him no choice but to either go out of business, sell out to Schine on the best terms he could, or else accept a subordinate position where he would play such runs and such films as Schine rejected. That is the situation that has gradually evolved today.

Now, the dispute here is not over what happened to these independents. That, of course, is perfectly clear. It largely concerns how and why these people were eliminated. Schine's acquisition of competitors of course is set forth in the answers to the interrogatories. There is no dispute about the fact that they were persistently and regularly acquired. The only real issue to determine here is one of the intent and purpose with which that was done. We of [fol. 67] course claim that the purpose and intent of Schine in acquiring these competitors was to achieve the kind of a theatre-operating monopoly that he has now got, and that it was done by means which were illegal.

Now, as to the illegality of those means, the principal device which was used to accomplish it was, as I have already pointed out, the application of the buying power of the entire circuit, bringing that to bear on the situations where competition appeared. That is to say that in the towns where Schine was confronted with an operator who was operating an opposition theatre, who only had one or two theatres, operation was confined to that town, Schine has been able to prevent operators of that character from competing with him in licensing films simply by making it clear to the distributor with whom the independent may have been dealing, or may seek to deal, that the revenue from the entire Schine circuit is not going to be available to him if he is so brash as to sell Schine's opposition on terms that are repugnant to Schine; in other words, on [fol. 68] terms which will permit the independent to offer Schine effective competition in the display or exhibition of

the films of the particular distributor. That is the practice that is at the heart of this lawsuit.

The Court: What about these contracts being similar in form?

Mr. Wright: Well, the method of contracting with Schine is, roughly, this: They frequently use a so-called master agreement. You understand that the Schine circuit consists actually of about 100 corporations, only some of which are defendants here, but they are all owned and controlled by the defendants in this suit. Those corporations operate the theatres in the various communities or own the property, but the licensing is all done through one or two corporations or one or two individuals representing the Schine Company, say in Gloversville or New York City, and in the buying generally the needs of the circuit are bought from a particular distributor as a unit. That does not mean that there is just one contract made for the entire circuit. It frequently takes this form and a so-called master [fol. 69] agreement will be made, which is simply an agreement to use so many films in various parts of the circuit for so much money, and then that will be followed up by the execution of formal license agreements which will be made for each of the theatres where the films are to be exhibited, but those agreements will all bear approximately the same date; they will all be made at the same time.

The Court: Do they make provision for second and third runs?

Mr. Wright: Those agreements generally contain the provisions in which they will set up the run that the theatre is to have, first or second. Of course in the case of Schine it is the prior run in each instance or a second run where he also wants a second run, and will generally also specify the minimum admission prices that are charged on those runs, and will specify any clearance that is to be had over competing theatres.

The Court: Do you make the same claim in those instances, fixing the prices for the different runs?

Mr. Wright: No, the claim made here is not one based on admission price discriminations except in certain instances. [fol. 70] We will show that Schine is permitted to go below and violate his admission price agreements at a time when an independent may be competing with him, but for the most part the type of discrimination that is involved here is not an admission price discrimination, but it is the in-

ability of the exhibitor to even deal at all. It is a much more serious form of discrimination. That is, that Schine in many cases, for example, has been able to take the product away. Let us say that an independent has been enjoying a regular run of Universal pictures, or the pictures of some other distributor, which he has been playing on first runs. Schine comes into his town and is able, by the use of the circuit buying power he possesses, to compel that distributor for the ensuing season to stop serving the independent films, not to make a contract with him but to simply take the films and transfer them to the Schine theatres without the independent being given any opportunity to even negotiate for a continuance of his run.

The Court: I assume you do not expect to prove any [fol. 71] writing to that effect?

Mr. Wright: As to the mechanics of proof, we expect to show it in this way: Of course the case is necessarily a circumstantial one. It is perfectly true after the Interstate Circuit case, which was tried in 1936 and 1937, we have not seen any more letters from a prominent exhibitor in which he says in so many words to the distributor "You have got to discriminate against my opposition in this or I won't do business with you." We don't expect to produce writings of that character. We do, however, expect to show conclusively that what happened was a response to the same kind of a demand by showing what happens in a wide variety of situations. That is, we will offer proof of what happens in the towns that Schine came into, that is, where there were independents who had been operating there.

The Court: They tried to buy it, you mean?

Mr. Wright: Yes, a typical situation would be one where the independent, or one or two independents, operating in a town, Schine comes in there and builds a new theatre or [fol. 72] he buys a theatre of one of the independents, and then the next thing that happens is that the surviving independent finds that the product of one of these major companies has been sold away from him to Schine, and by selling away I mean he finds he cannot even negotiate for a continuance of his run of the product, that the distributor simply tells him he has given the films to the Schine circuit, and that is that, without any attempt to even learn what the independent would offer, to continue to show them. Those circumstances are in themselves, we say, conclusive proof that the distributor's decision was not affected by

competitive factors because he didn't even give them a chance to operate, that is, he does not even find out what one competitor will give, and the only way in which conduct of that kind can be explained is in terms of at least an implicit demand by Schine that he not do business with an independent if he wants to get the maximum revenue out of the Schine circuit. The contrasting situations, of course, will be where we will show that an independent [fol. 73] attempts to come into a Schine town and compete with Schine, and in those cases the independent is simply met again with a refusal to deal, and usually on the customary ground that it will be said, "We have a satisfactory account here and why should we negotiate with you?" That is a variation of what is called in the trade the old customer theory. That is, they have widely represented, of course, that where someone has been a satisfactory customer he won't be given an opportunity to continue to negotiate for his run as long as that condition continues. That theory is rigorously applied where the circuit happens to be an old customer. There is again no possibility of competitive negotiations, even if the independent comes in and buys or builds a theatre which is far superior to the ones that Schine has got. But in the other situations, where Schine comes in and the independent is the one who is established there before, we expect to show that he simply takes away the product from the independent again without any competitive negotiations, and the result of taking away one [fol. 74] or two products is generally enough to convince the independent that he cannot compete with Schine in licensing films in that town, and then of course the sell-out occurs. What form that takes depends, to a great extent, on the resistance or the business ability or the particular temperament of the independent. In some cases he sells out to Schine or he becomes a manager of Schine theatres. In other cases he may be able to make a deal where he retains a half interest in the business, or in other cases he may simply be forced out altogether. But in other cases, so far as the Sherman Act is concerned, regardless of how favorable *to* unfavorable the particular treatment of the exhibitor who sells out or joins up may be the effect on the public or the community in the town is the elimination of competition in each case, and we propose to show that of course what happens in those cases is exactly what you would anticipate would happen, that is, your admission

prices will move up, generally one of your theatres will be [fol. 75] closed or operate on a part-time basis, because it is far more profitable to provide limited facilities at higher prices as long as you are not faced with the necessity of meeting competition from other theatres. So that in addition to this proof of how circuit buying operates, which will consist in the testimony of these independents who attempted to compete with Schine—and incidentally that testimony of course will be supplemented in each case by whatever correspondence did pass between Schine and the distributor with respect to that situation; that is, in some cases there will be documentary evidence of that character showing that there were at least some representations made and some discussion back and forth between the distributor and Schine as to what should be done or not be done about the independent opposition.

We will, of course, offer those documents along with the testimony. And the third type of proof that we will offer will be the inter-office memoranda and correspondence with the distributors themselves. That is, during the course [fol. 76] of these negotiations the branches will ordinarily submit certain contracts with recommendations or memoranda will go back and forth between the branch and New York setting forth why a particular act was done or what representations might have been made by Schine as to what should be done with respect to a particular competitive situation, and we will, of course, offer memoranda of that character. In some cases where there is memoranda in existence which does tend to show what actually moved the distributor to do what he did in, let us say, for example, cutting off an independent in favor of Schine.

Now, in addition to proof of that character of course we will offer a wide variety of proof to show an intent and purpose on Schine's part to monopolize theatre operations wherever he could. That is, to eliminate competition as such, so that he could have the maximum control over film licensing and admission prices. Of course, in any closed situation that is what you achieve when you eliminate all of [fol. 77] the theatre opposition in the town. You then set your own admission prices and you pretty much set your own film rental, because there is nobody to compete in offering entertainment to the public or nobody to compete with you for the films of a particular distributor as far as that town is concerned. And then the effect of that, of course,

is heightened when, as in Schine's case, you are able to group together for your license negotiation purposes forty or fifty of these closed situations and group them with the situations where you have opposition, and then the distributor is faced with the problem of meeting Schine's demands in the competitive situations if he is able to get into these closed situations, in other words, if he is able to get a major portion of the revenue the Schine circuit has to give him he is in a position where he has to meet Schine's demands in the competitive spots.

As I say, the mere elimination of competition constantly strengthens the buying power of the circuit and the augmentation of the buying power of the circuit results in a [fol. 78] constant further elimination of independent competitors because it increases the weight of the weapon that Schine can employ against them, so that you get a progressive increase in buying power accompanied by a progressive elimination of independent competition.

The type of proof that we propose to offer — to show that this kind of development was just not accidental, but was the result of a deliberate and intentional plan as far as the Schine defendants are concerned, to bring about that result is evidence of what might be called predatory practices in these particular situations; that is, the making of threats to build a theatre simply for the purpose of scaring out competition, the continued retention of excess capacity; that is, we find theatres being purchased, closed, and kept under lease for substantial periods of time, not of course because they are serving the community or performing any legitimate functions, but they do remain there as a continuing threat to anybody who might get the idea that that town ought to have another theatre. Schine [fol. 79] keeps himself in position to reopen a closed theatre at any time an opposition appears, and that closed excess capacity is in itself an effective threat which prevents the appearance of competition in the town where he operates.

And we will, of course, also expect to show that where these deals are made, taking over an independent theatre, that customarily an agreement not to compete in the future is taken, and of course those agreements in themselves may be perfectly proper if used separately, but, as has been frequently held, the cumulative effect of the use of such agreements in a number of situations demonstrates

very clearly the intent to be rid of competition and to operate on a monopolistic rather than a competitive basis in every case where the defendants have theatres.

Along with these practices of theatr-, such as I have described, we would expect to show that in the competitive situations that Schine also resorts to the admission price [fol. 80] cuts or the use of bank nights or other extraordinary attractions, not for the purpose of legitimate competition but simply for the sole purpose of running the competitor out of business, with the price, of course, going back up and the entertainment going back on a normal basis.

The Court: The competitor could do the same, couldn't he?

Mr. Wright: Within the limits of his resources, yes. We do not think the practice has any significance except where it can be shown that it was not done for profit but was done simply to eliminate a competitor. Your Honor is absolutely right about that. Any competitive device which brings more people into the theatre is perfectly legitimate in itself and not a ground for complaint, but we do expect to show that in certain instances Schine resorted to these devices, not for that purpose but to eliminate that competing theatre.

The most conclusive single bit of documentary evidence that I think we have in the case on the question of the intent to monopolize rests on these franchises which I [fol. 81] briefly touched on before, and which were avoided at the time that the temporary order was entered. Of course that prevented the future illegal consequences of the franchises, but it did not go back and take away from Schine the advantages he got as the result of making these agreements which we claim are illegal in and of themselves. The franchise is simply a license agreeemnt which covers more than a year. These involve periods of anywhere from two to three or four years, where the exhibitor simply says, "I will be the exclusive outlet for your films in all of my towns for a certain period of time." And there is usually, again, a general form of agreement covering the general terms and supplemented by the execution of individual license agreements, but the effect of the franchise, of course, is simply to give express sanction to the exercise of circuit buying power and simply freeze the competitive situation for this extraordinary period of time. That is, once a franchise has been made in

the course of the period of time that it covers somebody [fol. 82] may build the finest theatre in the community and the franchise, by its very terms, will prevent the distributor from dealing with that new and better theatre at all.

These franchise—of course the effect of them in many cases were profit-sharing agreements. That is to say, the film rental that Schine was to pay these distributors was based upon an allowance to him of certain operating expenses, with a percentage of profit to the distributor, so that what you had in effect was simply an agreement by the distributor with Schine which would give the distributor a certain share of Schine's profits. What is the effect of that, of course, as far as competition is concerned? Those long-term profit-sharing agreements simply have the effect of making Schine a virtual partner of the distributors in general and thereby acquire almost the same kind of a stake in Schine's elimination of competitors that those distributors are selling that Schine itself has. So that the effect of these franchises and their percentage compen- [fol. 83] sation profit-sharing agreements, of course again with minimum admission prices, and the distributor of course benefits directly in those cases from the maintenance of the highest possible admission price by Schine. Under those circumstances if you permitted agreements of that kind to be made it is perfectly apparent that nobody can come in and deal with those distributors in opposition to Schine on any basis which would afford any real competition to Schine.

The Court: Does that apply to all theatres or only to these?

Mr. Wright: These franchises cover generally all the theatres in the circuit, with certain exceptions. For the most part they would cover the entire circuit, and they were gradually built up to the point where I believe in the 1939-1940 season, that is the motion picture season which immediately followed the filing of this suit, Schine had tied up under franchises seven of the eight major distributors, so that the only one left out, I believe, was the United Artists, which, because of the nature of its business, as I [fol. 84] said before, does not sell an entire season's product, but makes separate agreements for the various distributors. As of that season it finally reached the point where they had tied up by franchise agreements seven of the eight major companies. And those agreements prove

conclusively Schine's purpose to completely dominate and monopolize the distribution of major films in the towns where he operates were in effect partnership agreements.

Of course, in addition to the franchises we propose to show that in the town of Syracuse Schine is actually a theatre-operating partner of R. K. O., and Paramount, that the first run theatres there are pooled, the Paramount theatre and the R. K. O. theatres and the Schine theatres, under an agreement which Schine and those two distributors split the profits from theatre operation there. So that before we finish with this case we expect to satisfy your Honor completely on the proposition that Schine has deliberately intended to accomplish exactly the type of monopolization that he did accomplish, and the only real [fol. 85] issue in the case, as we see it, is what is to be done about it.

Schine, of course, is perfectly willing to agree to the injunctive provisions of that order, and I do not suppose there is any question today but that these defendants, like any others who have repeatedly violated the Act, are always willing to say, "Well, we won't do it again and will submit to an injunctive decree," but the problem here is really what can be done about restoring the competition that Schine has illegally eliminated by these means that we propose to show were used in this case.

The Court: You mean by that relief which will permit a repurchase of theatres sold under the conditions?

Mr. Wright: That is one possible solution. Another that is stated in the complaint is dissolution, that is, a separation of the Chain into its component parts, so that you would have the numerous corporations that make up the Chain actually operating on a separate basis and competing both [fol. 86] with outside theatres and with each other, so that your towns in the area could have the benefit of competitive operation. That is the real problem in the case, as we see it, is the relief from that situation.

The Court: Putting them all back in the position that they would have been in if there had been no violation?

Mr. Wright: That, of course, is extremely difficult to do, but I take it that a court of equity does strive toward that end, and in so far as relief is concerned our principal aim is not only to make it possible for future competition against Schine to appear and operate, the opportunity to compete, that is all we can ever hope to do. In this suit there are

only two things. One is to furnish freedom of opportunity to compete in the towns where Schine operates and to restore in so far as legal means can possibly do it competition which has been illegally eliminated from the towns where Schine operates.

The Court: They would have their remedy individually, wouldn't they?

[fol. 87] Mr. Wright: By way of treble damage suits?

The Court: By way of suits. If this Court found there had been violations——

Mr. Wright: It is perfectly true in so far as the individual operator is concerned he may have a treble-damage remedy. That is, of course, his problem, not ours. We are not interested in attempting to salvage any particular investment for any particular individual. What we are interested here in is principally the benefit to the public which the Sherman Act intended to give, and that is free and open competition in these towns.

The Court: You said the finding in specific cases is such-and-such. I thought you said you would go as far as possible to restore the status quo. If you did that——

Mr. Wright: I say as far as we are concerned we do not have any particular interest in restoring a particular operator to a competitive position. What we are interested in restoring is a competitive situation. Whether it represents the same competitors or other competitors I do not think is important.

[fol. 88] The Court: You presuppose that they would consent to an injunction not to violate the Act in the future?

Mr. Wright: I say injunctive relief which simply prevents the repetition in the future of offenses that have occurred in the past. I do not suppose they would consent to relief which goes so far as to attempt to affirmatively restore competition in any area where they have illegally eliminated it. That is what I meant by that kind of relief. It is not what I term ordinary injunctive relief. What I meant was simply relief which says you shall not commit in the future the sins which you have committed in the past. That, of course, does not do anything about situations where the community itself has lost the benefit that it was entitled to have from competitive operation by an illegal elimination of that competition, and that is the real problem in the case, as I see it, is to devise some means by which we can actually, not only permit competition to function in the

future, but actually affirmatively restore it in the cases [fol. 89] where it has been illegally eliminated.

The Court: You say you are not interested in individual instances?

Mr. Wright: We are not interested in individual instances, but my point is that what we are primarily is the question of divestiture in those situations, that is, divesting the theatre which was acquired to eliminate competition and putting it back in the hands of those who would compete. It is not significant from the public standpoint whether the theatre goes back to the man who sold it. In many cases it is not possible. The public interest, I take it, is protected by simply seeing that the competitive situation is restored. That is, that the theatre does go back into the hands of people who will compete with Schine.

The Court: How do you do that? Supposing nobody wants to buy it, then what?

Mr. Wright: As your Honor has already seen, in the divestiture matter that has been heard here, the very situation of the Circuit and its buying power hangs as a threat [fol. 90] over anybody who goes into these towns, and I do not suppose you can find buyers until you have sufficient injunctive assurance that anybody who does go in and invest his money there is going to be able to compete for films. That, of course, is the other thing we hope to accomplish in this suit.

The Court: We will suspend now until 2:15.

(Whereupon a recess was taken until 2:15 o'clock P. M.).

[fol. 91] After recess. 2:30 o'clock P. M.

Appearances: As before noted.

Mr. McKay: If the Court please, Mr. Richardson had intended to open, and in view of his absence, I would like to reserve our opening for the opening of our case, but I would like to take a little time to point out to your Honor certain things that I think you ought to have in mind during the presentation of the plaintiff's evidence.

I am not going into our proof, but there are certain things that this Court should know while it is considering the plaintiff's evidence, and I would like to bring those to your attention, as briefly as possible, if I may.

The Court: Well, that is not the regular procedure.

Mr. McKay: It is unfortunate Mr. Richardson is not here. That is something I just could not help.

The Court: When will he be here? Is he going to be here today some time?

Mr. McKay: I am afraid now he can't get here until tomorrow.

[fol. 92] The Court: Will there be an objection to his opening tomorrow?

Mr. Wright: Not as far as we are concerned, if we can go ahead with the testimony now. We could take time out for his opening tomorrow.

The Court: We cannot get very far this afternoon anyhow.

Mr. McKay: What I was going to say would be covered in Mr. Richardson's opening, anyhow.

The Court: How long will that take?

Mr. McKay: Not over a half hour, your Honor.

The Court: It is out of order. I should think. The opening should be made at one time. There is no objection to your dividing the time with Mr. Richardson, but I am speaking of the order, that is all. Wouldn't it be orderly if you both desire to open tomorrow?

Mr. McKay: I think there are certain things that should be before your Honor before any evidence goes in and that is what I want to present to you at this time.

The Court: I don't want to go over the same matters twice in openings, that is all.

Mr. McKay: I will assure you there will be no repetition, and I think that if I am able to present these matters to you [fol. 93] today Mr. Richardson won't need to open until we come to the opening of our case, so in the long run, the plaintiff will have more time during this one-week period to present their evidence.

The Court: Well, I don't think it is necessary as far as hearing the evidence. If it involves some answer to your opening at this time by counsel—your statement now may involve or invite some reply by Mr. Wright. That is all. I think it will all develop on the trial.

I will rule tomorrow you and Mr. Richardson, if you want to at that time—we will take the proof now—and hold it until that time. We will see how far we can get along this afternoon.

Counsel representing some of the other groups of companies should sit at the table here (indicating a table being carried into the court-room) in order to keep track of the record and so on.

I think that would be an orderly way. Both of you won't [fol. 94] refer to it in that way.

Mr. McKay: In that event, your Honor, we may open tomorrow, or we may decide to reserve completely. But aside from *from* any opening there are a couple of things here I want to remind your Honor that at the time of the motion for preliminary injunction, we had a motion to dismiss the complaint, which was withdrawn with the understanding that it be preserved in our answer.

That appears in the first and second separate defenses in the present answer to the amended complaint. I do not propose to argue those defenses at this time. I want to reserve them at least until the close of the plaintiff's case and possibly until the close of the whole case, but I felt obliged to mention that so it is not considered we abandoned those defenses.

The Court: We are to understand that your answer to the first amended complaint stands as your answer to the second amended complaint.

Mr. McKay: Yes, that is right.

The Court: Doesn't that meet your particular requirement?

[fol. 95] Mr. McKay: That does, yes.

Now, I move to strike all that part of the second amended complaint which deals with any theaters located in the State of New York, or operated in the State of New York, and I make that motion on the authority of United Artists v. Taylor, 273 N. Y., where the Court of Appeals of this State distinguished the operation of motion pictures in New York State from the Binderup case, which is the leading case holding that this motion picture business involves interstate commerce.

I don't imagine that your Honor will want to rule on that motion at this time, but I want to have it on the record that we have moved to strike the allegations, in so far as they relate to New York State. There is a distinct difference between the business in New York and the business elsewhere in the country. The Binderup case held that interstate commerce was involved because the positive prints went into the State of Nebraska pursuant to contracts made

in New York and that was the element of interstate com-
[fol. 96] merce.

In the case of Theaters in New York, the prints go to theaters in New York, pursuant to contracts made in New York, so that interstate element is eliminated and the Court clearly pointed out that distinction, and that is the reason for making this motion at this time.

The Court: I will deny it at this time.

Mr. McKay: I assume, your Honor, we will have a general exception to all adverse rulings. It is not necessary to make any?

The Court: Yes.

Mr. McKay: May I ask your Honor what time you propose to suspend today?

The Court: I will meet the convenience of your gentlemen.

Mr. McKay: If we could stop at 4 o'clock today——

The Court: We will see how we get along. We will try to. First witness.

[fol. 97] EMERSON W. LONG, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Boggess: May it please the Court, I believe I was introduced to the Court two years ago when the case started.

The Court: Yes.

By Mr. Boggess:

Q. Mr. Long, state your residence and occupation.

A. I have a movie theater in Cadiz at the present time.

Q. In what state?

A. Ohio.

Q. How long have you been engaged in the motion picture business there?

A. Since 1924.

Q. Mr. Long, in about 1934 or 1935, you went into the motion picture business in Mt. Vernon?

A. I did.

The Court: In this state, you mean, or Ohio?

Mr. Boggess: Mt. Vernon, Ohio.

The Witness: Ohio.

Q. When did you begin to operate the theater at Mt. [fol. 98] Vernon, Ohio?

A. December 31st, 1934.

Q. What was the name of that theater?

A. Memorial Theater.

Q. Were you in Mt. Vernon in the year preceding the time that you opened the theater, that is, in 1934?

A. I was, two or three times.

Q. When you were there with reference to motion picture theaters what was the condition, how many theaters were there?

A. The first time I was there there were three theaters, the Vine and the Lyric and the Memorial.

Q. Who was operating the Vine?

A, The Vine was being operated by the Schine outfit or company.

Q. You say the first time that you were there. Was that in 1934?

A. 1934.

Q. Who was operating the Lyric Theater?

A. The Lyric was closed. I think at that time.

Q. And the Memorial Theater. What was the status at that time?

A. It was closed.

Q. Mr. Long, will you describe the Memorial Theater as [fol. 99] to its location and as to what its condition was physically?

A. The Memorial Theater is located about a block and a half from the public square. It is opposite the Court House on High Street. Its seating capacity was 1100 seats, balcony and main floor, about 550 on each floor.

The Court: Is that the largest theater of the three?

The Witness: That was the largest theater in the town by 400 seats.

The Court: What is the size of the town?

The Witness: The town is approximately 10,000.

By Mr. Boggess:

Q. Who owned that theater?

A. It belonged to Knox County.

Q. From whom did you lease this theater?

A. From a Board of Trustees which was appointed by the Court in the county that had charge of the leasing of the building.

The Court: The county, you said?

The Witness: The county, yes sir.

Q. Mr. Long, did you make any improvements on the building when you leased it?

A. We put in a new sound system, Western Electric sound system and done some acoustical work, the acoustics were very poor, put some new carpetings in back of the lower seats and considerable work on the stage.

[fol. 100] The Court: You did not say when you leased it. What year? You said you were there first in 1934.

The Witness: Our lease took effect the first of January, 1935. We opened the night of December 31st.

Q. And for what length of time was the lease?

A. The lease was for three years with an option for two more, a five-year lease.

Q. What was the location of the Vine Theater?

A. The Vine Theater was located about a block or block and a half from the square on Vine Street.

The Court: Is that Vine, V-i-n-e?

The Witness: Vine, yes, your Honor, Vine Street.

Q. Can you describe that theater?

A. It had a seating capacity of about 600, I believe. It was built probably ten years before, all on one floor, the seating.

Q. Can you describe the Lyric Theater?

A. The Lyric Theater was a small theater of about 250 seats on the corner of the square. It had been a remodeled storeroom. It was the inferior of the two.

Q. Mr. Long, you mentioned when you were there in 1934 at that time the Lyric Theater was closed. After you opened the Memorial Theater was there any change in the status of the Lyric Theater?

[fol. 101] The Lyric was opened within a very few days after we opened the Memorial.

Q. Mr. Long, what steps did you take towards securing products when you opened the Lyric, when you opened the Memorial and before you opened the Memorial?

A. We had written and also contacted personally all the exchanges in Cleveland and Columbus that controlled that territory for products, for first-run products.

Q. You say you contacted personally. Did you make trips?

A. Made trips to Cleveland, two or three times, I think.

Q. When was your first trip to Cleveland, as you recollect?

A. It was in November or December, December, I think.

Q. Whom did you see at Cleveland?

A. Well, we contacted Mr. Drew, the manager for Metro and Mr. Schmertz for Fox, Mr. Mooney for Warner Brothers and Mr. Bissell for Columbia, and the others, Universal and RKO, I don't remember the managers' names.

Q. You mentioned you contacted Mr. Drew. What was your conversation with him, briefly?

Mr. Rogers: May it please the Court, I respectfully object on the ground that no proper foundation has been laid for the admission, no evidence of authority on the part of the person, no evidence of connection with the company and on the ground it is not binding on the Schine defend- [fol. 102] ants.

Mr. Boggess: I will come to that, your Honor.

Mr. Rogers: I think we ought to cover that first, may it please the Court.

The Court: You will cover authority?

Mr. Boggess: I will attempt to cover it, yes, sir.

Mr. Rogers: May it please the Court, I object to the counsel saying he will attempt to cover it. I think we ought to get over the hump first, because later we will get a lot of evidence that is not connected, encumber the record and influence the Court.

The Court: I will strike it out if it is not connected. Sometimes you can't get all these things with one witness.

Mr. Rogers: I also object on the further ground before any evidence can be admitted in reference to any of these distributors, there must be evidence first established of conspiracy. Until that is done the evidence is not admissible.

The Court: No, I do not agree with that statement of the law. I do not think the order of the proof is material, necessarily. No.

Mr. Rogers: I believe that is the law as I found it, sir.
[fol. 103] The Court: I overrule the objection in the form it is put that you object to this testimony at this time. Objection overruled.

Mr. Boggess:

Q. Mr. Long, you mentioned that you had been in the motion picture business for a number of years at Cadiz, Ohio?

A. That is right.

Q. Where was the headquarters of the district and the motion picture world where the branch offices of the distributors were located? Where was that place with regard to Cadiz?

A. Both Cadiz and Mt. Vernon we bought our pictures through Cleveland Exchange with the exception of Paramount, which was released through Columbus at that time.

Q. Did you make frequent trips to Cleveland?

A. I did, both Cleveland and Columbus.

Q. With reference to the Mr. Drew that you mentioned, can you tell us Mr. Drew's position with Loew's Company?

A. He was District Manager.

Mr. Rogers: May it please the Court, I do object to that upon the ground this does not lie within the knowledge of this witness. It can only be hearsay and this should be direct proof.

The Court: The question is can he tell.

[fol. 104] Mr. Rogers: Can he tell.

The Court: Answer "Yes" or "No."

The Witness: Yes.

By Mr. Boggess:

Q. What was his position?

Mr. Rogers: One moment. I object to it on the ground the question calls for a conclusion, that he still hasn't qualified the witness.

The Court: Unless you have all of his duties.

By Mr. Boggess:

Q. Mr. Long, have you had occasion to buy products for your theater at Cadiz?

A. From Cleveland.

Q. From the Loew's office at Cleveland?

A. Yes, for several years.

Q. Have you negotiated for it through Mr. Drew?

A. I knew him personally for 8 or 10 years.

Q. Then state what was his position with Loews & Company in Cleveland?

A. He was District Manager, he was Manager of the district in which we were located.

Q. Is that called District Manager or Branch Manager?

A. Well, it can be called Branch Manager, I suppose, in Loews.

Q. Tell your conversation as near as you recollect when [fol. 105] you called on Mr. Drew. What was his response?

A. We asked for consideration in first-run pictures for Mt. Vernon, and he told us that the product was sold to the Schine Company, that he could do nothing for us.

Q. Was that the extent of the conversation?

A. That was about all there was to it as far as business was concerned.

Q. Was any other run mentioned?

A. No.

Q. I believe you mentioned the distributor's office that you called on. You mentioned Mr. Schmertz. Had you done business with Mr. Schmertz while you were operating at Cadiz?

A. We had.

Q. Had you negotiated for any product?

A. We had at Cadiz, both him and his salesman.

Q. With what distributor was Mr. Schmertz connected?

A. 20th-Century Fox at the time.

The Court: Which one was Drew with?

The Witness: Metro or Loews.

Q. Do you Mr. Schmertz? The second one was Fox. Do you know Mr. Schmertz' connection with Fox?

A. The same.

Mr. Rogers: One moment.

Mr. Boggess: I asked him "Do you know."

[fol. 106] Mr. Rogers: He can answer that.

The Witness: He was——

The Court: Do you know what his position was there.

The Witness: Why, he was general manager for the district.

The Court: The question is whether you know, "Yes" or "No." Answer "Yes" or "No."

The Witness: Yes.

The Court: State what his dealings, what the source of his knowledge is.

By Mr. Boggess:

Q. How do you know the connection that Schmertz had with Fox at Cleveland?

A. His name on the door was manager, District Manager, or I forget the other one.

Mr. Rogers: One moment. May it please the Court, we are entitled to know what.

The Court: He was the manager. Who did you say was the manager?

The Witness: Of Fox?

The Court: Of Fox.

The Witness: Schmertz, R. J. Schmertz.

The Court: What do you know about his duties there?

The Witness: I have known him for several years before, I had been in his office quite often and he was general man-
[fol. 107] ager. He was the man you went to and everybody went to for orders in the office.

The Court: What connection did you have with him?

The Witness: I bought pictures from him for Cadiz.

The Court: How long a period of time?

The Witness: Possibly six or eight or ten years.

The Court: All right.

By Mr. Boggess:

Q. What was the conversation between you and Mr. Schmertz?

Mr. Rogers: Pardon me. You have given us a date yet.

Mr. Boggess: The first one was he said prior to the time.

Mr. Rogers: Let us get it fixed.

The Witness: December, 1924. I don't know the exact date.

By Mr. Boggess:

Q. Answer my question. Will you read the question?

(Last question read.)

A. I approached Mr. Schmertz the same way I did Mr. Drew, asking if there was any chance to get first-run

products for Mt. Vernon of his pictures, and he said there wasn't, that the product was sold to Schine.

Q. Was anything else said?

A. Not very much that I can remember.

Q. You mentioned going to the office of Warner Brothers [fol. 108] and that you talked to Mr. Milton Mooney. Had you done business with Warner Brothers and with Mr. Mooney while you were at Cadiz?

A. The same length of time I had with Metro and Fox. We played the major products at Cadiz.

Q. Had you bought Warner products from Mr. Mooney while you were at Cadiz?

A. We had, yes.

[fol. 109] Q. This visit that you made to Warner Bros., in which you say you asked him for product, about when was that?

A. That was in December, at the same time, possibly the same day—well, it was the same day that I visited the other Exchange.

Q. And what was the conversation between you and Mr. Mooney?

A. Practically the same as with Fox and with Metro. They had no product to offer first run.

Q. Mr. Long, you mentioned going to the R.K.O. office. You didn't mention the name of the party to whom you talked. While you were in business at Cadiz had you done business with the R.K.O. office at Cleveland?

A. We had.

Q. Had you negotiated for product with the party who was branch manager for R.K.O. in December, 1934?

Mr. Rogers: Pardon me. I object to that on the ground that that calls for a conclusion. We have the right to have the testimony specify.

The Court: The question is perhaps a little leading. Ask him what his relations had been with this man prior to December, 1934.

Q. Do you recall his name, Mr. Long?

A. I can't recall the R.K.O. man. We did business mostly through the sales manager and representative on the road. I knew him but I can't recall him at this time.

[fol. 110] Q. Had you bought product at the R.K.O. office in Cleveland?

A. We had, yes, both at the office and at Cadiz from the salesman.

Q. When you walked in did you ask for the manager?

Mr. Rogers: One moment. Let us have the testimony of this man, not your testimony.

Q. What did you do when you walked into the R.K.O. office?

A. Well, I can remember one trip I asked for the manager and he was not in, and they contacted me with the sales manager, in an adjoining office. I think it was he that I talked to about product there and was turned down.

Q. I am talking about your trip. You said you visited there——

Mr. Rogers: I want to have that answer stricken, "I spoke to him and was turned down."

The Court: "Turned down" may be stricken out.

A. They wouldn't give me any pictures.

Mr. Rogers: I move to strike that as a conclusion.

The Court: Counsel was inquiring about your relations with the office prior to December, 1934.

Mr. Boggess: In December, 1934.

The Court: I thought you were seeking to show his knowledge of the position at the time. That would be shown by what transpired prior to December, 1934. You can ask [fol. 111] him about his contacts prior to 1934 and——

Mr. Boggess: I asked him that quesion and he said while in Cadiz he had done business wih R.K.O., he didn't remember the name of the man.

The Court: He was not in the office when he went there. You are speaking about December that you went there?

The Witness: Yes, in December.

Q. What occurred when you went there; who did you see?

A. I seen the sales manager and I asked for product——

The Court: Is this some man you had done business with who came to your place?

The Witness: No, a salesman from his office is the man I contacted at Cadiz, his boss you might call it, in the office at Cleveland; you would rarely see them unless you went to Cleveland.

The Court: You weren't able to see the manager but you saw the salesman?

The Witness: I saw the sales manager. There is a head man under him and then there is the salesman on the road.

Mr. Rogers: If the Court please, I move that testimony be stricken on the ground that this man is not qualified to testify as to the position of the man with whom he spoke.

[fol. 112] The Court: Had you known this man before 1934?

The Witness: Yes, I had known him.

Q. What contacts had you had with this individual, to show the relationship?

A. I had met him in Cleveland and the District Manager had been down to my office at Cadiz out of the R.K.O.

Q. This man you speak of as the Sales Manager?

A. Yes, the Sales Manager and the District Manager, both of them had been down at Cadiz.

The Court: Objection overruled. Just a moment. You bought pictures through them?

The Witness: Yes, we bought pictures through them for Cadiz.

By Mr. Boggess:

Q. What was your conversation with this party?

A. Well, we asked for a first run product and they said they had none to offer, that it was already sold in Mt. Vernon to the Schine Company.

Q. You mentioned that you also went to Columbus?

A. Yes, sir.

Q. When did you go to Columbus?

A. About the same time or possibly a little earlier in the year, in the fall.

Q. The office of what distributor is located at Columbus?

A. Paramount. The manager there was Duke Clark, whom I had known before.

[fol. 113] Q. Let me ask you a question there. During the operation of your theatre at Cadiz had you done business with Mr. Clark?

A. I had.

Q. And bought product from him?

A. I had.

Q. When you went to see him at Columbus state the conversation that you had with him?

A. Well, I told him we had acquired the Mt. Vernon Theatre, the Memorial, and I was looking for product, and

asked him if he had any first run product to offer, and he told us right away that their first run product was already sold in Mt. Vernon.

Mr. McKay: Your Honor, we have the same objection to each of these separate corporate entities; that is, on the ground that they have not shown the authority of the individual with whom they were dealing, and also on the ground that the statement of any of these persons is not binding on the Schine defendants. It will save time if we do not have to object each specific time.

The Court: The charge here, of course, is conspiracy on your violation of the Anti-Trust Law.

Mr. McKay: The position we have taken, and that is [fol. 114] taken by Mr. Rogers is that until they have put in prima facie evidence of conspiracy the declarations of these persons, who are not defendants here, are not binding on us.

The Court: I do not understand that the order is necessarily material.

Mr. McKay: We want to preserve our rights with respect to that ruling and I simply want to have it understood that that applies to each of the separate distributors as to which he is now interrogating the witness.

The Court: The question with respect to the qualifications or the authority of the individuals, so-called managers, it would seem to me it is prima facie sufficient at least to show their dealings over a course of years and the same type of contacts sought to be carried out.

Mr. McKay: I think the question of what their authority actually was will have to be developed from their employer. He only knows that he went and talked to them about product. He does not know what the extent of their authority was.

The Court: Proceed.

Mr. McKay: Exception.

[fol. 115] By Mr. Boggess:

Q. You have mentioned that you made several trips to Cleveland. Did you make trips after you opened the Memorial Theatre?

A. I did. I think I made two trips in January; maybe two or three.

Q. Did you call on the branch exchanges?
A. I called on the exchanges again, yes.
Q. Did you ask for product?
A. I did.

Mr. Rogers: Which exchanges are these questions addressed to?

Q. Name the exchanges that you called on when you went there in January.
A. Loew's, 20th Century-Fox, R. K. O., Warner Bros., Universal, United Artists, and Columbia, of the major distributors.

Mr. Rogers: May it please the Court, if that be the case, I think we are entitled to evidence as to the persons he saw in those respective companies and just what the conversation was and the date of the conversation, so that we can meet it properly if necessary.
Mr. Boggess: Would that not be a question for their cross examination, your Honor?
The Court: No, I think it should affirmatively appear with whom these contacts were had in January.
[fol. 116] Mr. Rogers: Not only for cross examination, may it please the Court, but for our defense as well.

Q. Mr. Long, when you went to Cleveland in January, if you remember, what was the first Exchange on which you called?
A. Well, we already had a deal on with United Artists——

Mr. Rogers: Pardon me. I move to strike that out as not responsive.
The Court: On whom did you call first when you went there in January?
The Witness: That is very difficult to answer. Sometimes they were not in and I would run from one to the other.

Q. Tell who you called on.
A. Well, I will say I called on the United Artists first and met Mr. Goodwin, the Manager there, and asked for product, and he informed me specifically that their product was sold in Mt. Vernon.

Q. Who was the next one you called on?

A. I called on Columbia, I think. I am ahead a little——

Mr. Rogers: I move to strike everything out after Columbia.

The Court: Very well, strike it out.

Q. Mr. Long, you mentioned that in December you called at the Columbia Exchange and talked to Mr. Bissell?

A. Yes, sir.

Q. While you were engaged in the operation of your [fol. 117] theatre at Cadiz——

Mr. Rogers: We do not have any such testimony. You developed R. K. O. and——

Mr. Boggess: I haven't developed it. On the start he mentioned the name and he mentioned Mr. Bissell, that he called at the Columbia Exchange, and mentioned Mr. Bissell.

Mr. Rogers: That is all he said. Nothing beyond that.

Mr. Boggess: That is all I am asking him now.

Q. My question is: While you were operating the theatre at Cadiz had you negotiated for Columbia product with Mr. Bissell?

A. I had. I had put in an application early in December for products for Mt. Vernon, first run products.

Q. My question is: While you were conducting your theatre at Cadiz, during your operations at Cadiz, had you bought Columbia product for your Cadiz theatre?

A. Yes, we played Columbia product there.

Q. Had you called on the Columbia Exchange at Cleveland before?

A. Before we opened Mt. Vernon, yes, in the month before I think we had an application in there for first run product for Mt. Vernon.

Q. Had you bought Columbia product before this time from Mr. Bissell?

A. We had, from Mr. Bissell.

[fol. 118] Q. Do you know Mr. Bissell's title with the Exchange at Columbia?

A. He was District Manager, I think, for Columbia.

Q. What was the conversation that you had with Mr. Bissell when you called at the Columbia Exchange?

Mr. Rogers: Which date is this now, Mr. Boggess?

Mr. Boggess: December.

Mr. Rogers: I was a bit confused. This is December you are talking about, not January.

Mr. Boggess: December.

A. We had an application in and I was anxious to open with Columbia pictures, and he said he had to take it up with New York, and the result was that we were held up nearly two months before we got any first run picture from Columbia, in January, the last of January, or the first of March. We finally had the contract approved.

Q. Did you finally secure your contract with Columbia?

A. We did, after between two and three months after the application was put in.

Q. I ask you, is that your signature, Mr. Long (showing paper to witness)?

A. That is. That is my signature on the approval of the contract.

Mr. Boggess: I offer it for identification.

[fol. 119] (The contract referred to was marked as Plaintiff's Exhibit 1 for identification.)

Mr. Rogers: It seems to me, before this is marked, there should be an offer made and I should be given an opportunity to object to exhibits. Will you please observe that and not have exhibits marked before I have an opportunity to object to them?

The Witness: That is the contract.

The Court: He wanted him to identify his signature. He may identify it.

Q. Mr. Long, I believe you stated that on your trip to Cleveland in January you called at the United office and talked to Mr. Goodman?

A. Mr. Goodman.

Q. Who had the United Artists' product for 1934-1935, the first year——

A. We had the first run for 1934-1935, United Artists, at Mt. Vernon.

Q. Then you were in error in saying that Mr. Goodman had said that that product had been sold?

A. That is right. I had forgotten about that. I was thinking of a later date. That was an error.

Q. When did you purchase the product of United Artists for 1934-1935, if you remember?

[fol. 120] A. The contract was signed in January some time, I think, January, 1935.

Q. Now, Mr. Long, with reference to the United Artists' product for 1935-1936, did you have that product?

A. We did not.

The Court: You said 1934-1935.

Mr. Boggess: First it was 1934-1935, which he said he had. Now we are asking about 1935-1936. 1934-1935 would be September to December.

The Court: That would be from September, 1933, to September, 1934, and September, 1934, to September, 1935?

Mr. Boggess: 1934-1935 is from September, 1934,——

The Court: First it ran from January to September and next it ran a full year and then two years. I understand it. Go ahead.

Q. The United Artists' product for 1935-1936, did you have that product?

A. We did not.

Q. Who had that product?

A. Schine.

Q. What efforts, Mr. Long, if any, did you make to secure the United Artis-' product for 1935-1936?

A. Well, we contacted Mr. Goodman in his office at Cleveland and he told us that the product had already been sold through New York.

[fol. 121] Mr. Rogers: May we have the date of that conversation?

Q. State the time and the place that you had that conversation, Mr. Long.

A. In Mr. Goodman's office, some time in January. I can't remember the date. At Mr. Goodman's office in Cleveland.

Mr. Rogers: January, which year?

The Witness: 1935—or 1936.

Mr. Rogers: Which it it?

The Witness: 1936.

Q. In January, 1936?

A. Yes, that is right.

Q. And what did Mr. Goodman tell you?

A. He told us the pictures had already been sold in New York to Schine; the main office, he called it.

Q. Mr. Long, did you make any trips outside of Mt. Vernon, other than to Cleveland and Columbus, in your efforts to get progress?

A. In the summer—on the 25th of July, 1935, I went to the Department of Justice at Washington and from there I went to New York, and in New York I contacted Mr. Eddie Granger of the Fox Company and Mr. Unger of Paramount and Mr. McAvoy of R. K. O., in their main offices. Mr. Unger told us they had no product.

Mr. Rogers: One moment, please.

Q. You mentioned that you went to the office of Fox [fol. 122] and saw Mr. Granger?

A. Yes, sir, Mr. Eddie Granger.

Q. Tell your conversation, as nearly as you can recollect it, with Mr. Granger.

Mr. Rogers: One moment. May it please the Court, there has been no evidence adduced here as to Mr. Granger's position with Fox or the authority of Mr. Granger to make any statements on behalf of Fox, nor is it admissible on the ground of proving conspiracy.

Mr. Boggess: I will cover that.

The Court: Is the question withdrawn?

Mr. Boggess: The question is withdrawn.

Q. When you entered the office of Fox for whom did you ask?

A. I asked for the sales manager, which was Mr. Eddie Granger, the general sales manager for Fox film.

Q. When you asked for the sales manager to whom were you introduced?

A. I was introduced—I had known Mr. Granger before that, I had met Eddie Granger before. I was sent in immediately into his office.

Q. His office was in the Fox Building?

A. Yes, in the Fox Building on 54th Street.

Q. Do you know his title?

A. He was the general sales manager.

[fol. 123] Mr. Rogers: One moment. Yes or no is the answer to that.

A. Yes.

Q. What was it?

Mr. Rogers: I object to that as calling for a conclusion. That testimony cannot be adduced out of the mouth of this witness. It must be introduced out of a properly recognized officer of the 20th Century-Fox film, or however it was known at that time. He cannot prove agency out of his own mouth, or he cannot prove it out of the mouth of this witness.

The Court: As I said before, his authority may be shown by his prior contacts with the man.

Mr. Rogers: My position, may it please the Court, is this: They must first establish by proper evidence what the position was that the man held with the company. They have not done that yet with reference to anybody they have testified about. After they have established what the position of that man was, what his official position was with that company, from that point they may state what contact they had with that man and what business dealings they had with him, but they cannot establish that out of the mouth of [fol. 124] this witness, nor can they establish it out of the mouth of the agent himself. They must establish that out of the proper corporate records of that particular corporation or by the competent testimony of an officer in authority in that corporation. They have not done that. That is the point I make.

The Court: You may be right in that argument, but we are concerned here with the question whether this individual in the other instances was a salesman or a manager. The question of what the authority of the manager was may involve some testimony.

Mr. Rogers: My point is that the first hurdle has not been jumped in any one of these instances. It is a matter of fact as to what the position of any one of these persons is and that fact has not been established yet as a fact by any competent evidence with reference to any of the persons with whom he said he had conversations.

The Court: I have stated my position with reference to competent questions several times before. The proof may be made by showing the relations of this witness to a par-[fol. 125] ticular individual on prior similar occasions when he went to purchase films. If the man had bought for years from somebody who purported to be selling pictures of one of these companies over a period of years, I think

standing alone that that proof should be some proof of the authority of that individual to deal.

Mr. Rogers: That would be some proof of some authority, possibly some authority. They have not got that with reference to Mr. Granger at all.

The Court: He said he knows. Let us see how he knows.

Mr. Rogers: Exactly.

Mr. Boggess: He went there and asked for the sales manager and he has been introduced to this gentleman.

The Court: He said he knew him before. Let us see what his relations with Mr. Granger were before.

A. I had met Mr. Granger at several movie independent theatre organizations conventions. I knew him. I met him in Cleveland once, I think, and I knew that he was the sales manager. I was buying pictures. I naturally would ask for the man who sold them.

The Court: Not what you naturally would do. What did you do?

The Witness: I did. I asked for the sales manager and he was the man I met over there. He talked with authority. [fol. 126] He had authority to say yes or no and to tell me whether the pictures could be sold or not.

The Court: That may be stricken out.

Mr. Rogers: I ask it all be stricken.

The Court: It may be stricken out what he said he was, and so forth.

Had you bought any pictures direct from Granger?

The Witness: Not from New York. Granger, I think, had been in Cleveland before he went to New York.

The Court: Had you there in Cleveland?

The Witness: Yes, I had bought pictures from Fox.

Mr. Rogers: He does not say in what capacity Mr. Granger was serving in Cleveland at that time. He may have been a salesman there. He is now trying to attribute some statement to Mr. Granger at a later date that he was supposed to be sales manager.

The Court: Objection overruled. I will receive it.

Q. Mr. Long, state your conversation with Mr. Granger.

Mr. Rogers: May it please the Court, I do object to that on the ground that the conversation would not be binding in any manner on these defendants to prove conspiracy.

[fol. 127] The Court: I will receive it at this time for what it is worth. Objection overruled.

A. When talking with Mr. Granger about product he said that the Fox Company could not afford to turn down $50,000 worth of business in order to get Five, and my business only amounted to Five and Schine's would amount to $50,000, and for that reason they could not give me any product, first run product. He said specifically those words.

Mr. Rogers: May it please the Court, I move to strike that on the ground that there is no proof that Mr. Granger had any authority to make any statements with reference to the policy of the corporation and that authority certainly should be proved.

The Court: I will receive it at this time subject to considering your motion later on. I think there should be something more to show the authority.

Mr. Boggess: We can later show his exact title.

The Court: I will receive it.

Mr. Rogers: I understand that you are reserving on that?

The Court: Yes. I think there should be additional proof to show the authority.

Q. Was there any conversation between you and Mr. Granger?

[fol. 128] A. Not as I remember.

Mr. Rogers: May we get the date of that conversation, please?

The Witness: July 25, 1935.

Q. Now, you mentioned calling on Mr. Unger, I believe?

A. Yes, Mr. Unger of the Paramount Company.

Q. When you called at the Paramount office for whom did you ask?

A. I called for the sales manager, the general sales manager, the man who sold the pictures.

Q. Were you taken to the office of Mr. Unger?

A. Yes, I was taken to the office.

Q. Did you know prior to that time Mr. Unger's position?

A. I knew his position, but I had never met him. I had seen his position on letter heads. I had had some correspondence with him. He signed his name as general sales manager.

Mr. Rogers: I move to strike that on the ground that that is hearsay and not in the knowledge of this witness.

The Court: Very well, strike it out. I will receive the conversation, but I think standing alone it would be hearsay.

Mr. Boggess: In other words, the last remarks that he made, is that what you want stricken? He said that he knew——

The Court: I say standing alone the fact that he was [fol. 129] introduced to somebody as salesman and that that salesman said something about disposal of pictures, I don't think that that would be sufficient to show the authority to make those statements. I don't think that that standing alone would be sufficient. If you state to the Court that you are going to connect it up to show the authority of the individual I will receive it.

Mr. Boggess: We will connect it up later. I think this is prima facie enough to admit the testimony.

The Court: I will accept your statement under those conditions.

Mr. Rogers: Except I understand this witness to say he never met Mr. Unger before and didn't know him.

The Court: He did inquire in reference to some conversation with somebody whom he was introduced to as salesman. That alone would not be sufficient to establish authority. If that is followed up——

Mr. Wright: If the Court please, there is not any dispute whatsoever between us and the defendants as to who these people are. Schine does business with them, was doing business with them at the same time, and we both know [fol. 130] exactly what positions they had, and we outlined the positions in detail, and included it in the stipulation and it was offered to them in order to save this time so that we could have those facts stipulated in advance. Notwithstanding the fact that there is not any dispute whatsoever about who these men were, what positions they occupied, they have not seen fit to sign this stipulation, so that it will have to be connected up later, but there is certainly no time in wasting time over these objections that are made here about nobody knowing who these men were, because they all know perfectly well and have known ever since this lawsuit was started exactly what the authority of each of these people that we are talking about is, and that will fully appear before the case is over.

Mr. Rogers: May it please the Court, I do not think Mr. Wright should be unkind in his characterization of my conduct in the defense of this case. I am not making needless objections and I am not making frivolous objections here. There is a very grave charge made against these defend- [fol. 131] ants, the surviving defendants. Mr. Wright would have had an easier row to hoe if he had kept them in, because if he had them in he would get his answers. He chose not to do that. Now we have a situation where he is attempting to take non-defendants and introduce declarations by them in a conspiracy to charge defendants in this case here. In a situation of that kind, which is a situation of his own choosing and not a situation of our choosing, I expect to observe diligence here in preserving the rights of the defendant. I don't like Mr. Wright to characterize my conduct. I have had experience in the trial of cases and I don't like it.

The Court: You have the right to object to it. If there are things that are not in dispute you would save the time of the Court and everybody a lot of needless work if you did agree on some of these things that are not in dispute. I am going to let him testify with reference to what took place with these men connnected with these offices, but in all instances it may be subject to being stricken out unless [fol. 132] it is further connected up with the authority to make that statement.

Mr. Rogers: May I inquire, does the plaintiff expect to prove this authority before this witness is off the stand, so that we may have a proper opportunity to cross-examine?

The Court: You will have the opportunity to cross-examine when it comes your time.

Mr. Rogers: Except for this, may it please the Court, there is considerable testimony in here, subject to being connected, and on which your Honor is reserving decision, and it would be very difficult to conduct a cross examination because we will not know which testimony is in and which testimony is out. I do not want to take up a lot of the time of the Court cross-examining this witness on testimony that your Honor may strike out of the plaintiff's direct case.

The Court: I do not see the force of your argument. Your proposition would involve bringing all these men back here for a cross examination of every witness sworn here. We are not going to do that. We will be through with this

man's testimony and then take up the other testimony in [fol. 133] an orderly way and cross-examine.

Mr. Rogers: Then, with reference to this witness, I think the situation is quite different than with the other. While there may be a mere scintilla of foundation so far as Mr. Edward Granger is concerned, there is not even a scintilla so far as Mr. Unger is concerned. He says, "I don't know the man. I never met him before, never had any dealings with him." There is not even a scintilla of authority. I do not think that testimony should be admitted.

The Court: Overruled. It is received subject to being stricken out unless it is connected up.

Q. State your conversation with Mr. Unger.

Mr. Rogers: May we have the date of it?

Mr. Boggess: July 25th.

A. July 25, 1935. Mr. Unger told me that their product was sold in Mt. Vernon, but he thought that maybe he could get me some, he would write me later, just as he and Mr. McAvoy did, which will confirm my statement as to their authority. We had correspondence afterwards from them relating to the call and what we talked about.

The Court: Just answer the question. Never mind that.

Q. Was there any other conversation, other than that he [fol. 134] might get you some product?

A. That was about all.

Q. You mentioned Mr. McAvoy. In whose office did you find Mr. McAvoy? Just answer the question.

A. R.K.O. office.

Q. When you went to R.K.O. for whom did you ask?

A. I asked for the sales manager.

Q. The sales manager?

A. Yes, in charge of the sales of product.

Q. On what date was that?

A. The same day.

Q. When you asked for the sales manager into whose office did they take you?

The Court: Who do you mean? The office might apply to his position. Who did you meet when you were there?

The Witness: I met Mr. McAvoy.

Q. What was the conversation between you and Mr. McAvoy?

Mr. Rogers: One moment, please. I make the same objection.

The Court: That brings up another question there. What did you know about Mr. McAvoy with reference to his position? What did you personally know?

The Witness: I don't think I ever met him before. I only knew him from correspondence, and his name was on the door, "General"—or "Sales Manager" for the Company, in the R.K.O. Building there.

[fol. 135] Q. What was your conversation with Mr. McAvoy?

Mr. Rogers: Now, may it please the Court, I raise the same objection there, the lack of proof of authority, on the ground it is not binding, on the ground it is no proof of conspiracy, no foundation laid for the admission of proof of conspiracy.

The Court: I will receive it at this time, subject to further action on the motion.

A. I asked him for product, the same as I had the others, and they said they had a few first run pictures that were available, and he gave me the names of two or three pictures, and he said that he would take it up and write me about how I should get them, that Schine's hadn't played them and wasn't going to play them, but there was nothing definite. I didn't get anything until after I went back home. I got a letter from him then stating——

The Court: Just a moment.

Q. Did you later get any product from R.K.O. on account of that visit to Mr. McAvoy?

A. No, we never got any product.

Q. Mr. Long, I ask you to read that letter and see if that is your signature (handing letter to witness)——

[fol. 136] A. That is my signature. "Metro-Goldwyn-Mayer"——

Q. Don't read the letter.

A. Yes, that is my signature. That is my letter.

Mr. Boggess: I ask that it be marked for identification as a Government exhibit.

(The photostatic copy of letter of January 15, 1935, was marked as Plaintiff's Exhibit 2 for identification.)

Q. Mr. Long, did you get any second run product from any of the distributors?

A. Not for over a year.

Q. Did you get any product from Metro-Goldwyn-Mayer?

A. I got their second run product for 1934 and 1935.

Q. Did you have it for any other year?

A. I think we had it two years. We had it another year, 1935 and 1936.

Q. Did you have it for 1936-1937?

A. We did not. We called on Mr. Drew at Cleveland he informed us that the second run had been sold to Schine's for 1936 and 1937.

Q. Mr. Long, aren't you confusing that with 1937 and 1938?

A. Maybe I am——

Mr. Rogers: Just one moment, please. Let us get this witness's testimony. If this witness is not testifying accurately please don't furnish the gap with your testimony. [fol. 137] Please do it by question and answer.

Mr. Boggess: He was in obvious error.

Q. With reference to the second run product for 1936-1937, who had that product?

A. We didn't get that. Schine's had 1936 and 1937. We had it for one year and I think—the first year we didn't get it and then we had it for two years, the second run, and after that we didn't have it any more.

Q. You had it two years?

A. Yes.

The Court: You say the first year you didn't have it and then you had it for two years?

The Witness: The first year we ran the theatre we didn't have Metro's second run, and the second and third year run—that would be 1935 and 1936 and 1936 and 1937——

Q. Your testimony now is that you had it in 1935-1936 and 1936-1937?

A. Yes, sir.

Q. Did you make any effort to get Metro second run for 1937-1938?

A. Yes, I called on Mr. Drew in his office in Cleveland.

Q. What did Mr. Drew tell you?

A. He told me that New York had informed him that the second run had been sold to Schine's for that year.

[fol. 138] The Court: Metro?
The Witness: Metrol. Loew's.

Q. Did you hear anything at any later time in regard to the second run product of Metro for that season, 1937-1938?

A. I found out later in the spring that——

The Court: Just a moment. That would be hearsay what he found out.

A. I was in Mr. Drew's office and he told me.

Mr. Rogers: When was this?
The Witness: In the spring of 1936.

Q. This is the 1937-1938 product?

A. Yes, 1937-1938. It would be the spring of 1937 would be right. We inquired and asked for it and he said he had been informed by New York that it had been sold in Mt. Vernon. We didn't get it.

Q. You mentioned that before. My question is: After that conversation with Mr. Drew did you hear anything later in regard to this second run product of Metro?

A. Yes, on a later call Mr. Drew informed us that it had not been sold.

Mr. Rogers: Just one moment. May we have the date, please?

Q. State the date.

A. It would be the first of March.

Mr. Rogers: Which year?

[fol. 139] The Witness: Well, following my call. 1936 it would be, wouldn't it? We had it two years. 1937 it would be, I guess. 1937 would be right.

The Court: You said in 1937 Drew said it had been sold?

The Witness: Yes, in 1937. That would be for 1937-1938 product.

The Court: You said Drew later told you something.

The Witness: Well, he told me he had word it had been sold, that he didn't have it for us for 1937-1938.

Mr. Rogers: I am somewhat confused here.

The Court: So am I.

Q. Let me ask you a question again. The conversation that you had with Mr. Drew, in which you say that he told

you that the product had been sold to Mr. Schine, when did that occur, for 1937-1938?

A. That would be in the spring of 1937 in March.

Q. In 1937 you had that conversation?

A. Yes.

Q. My next question is, this being in the spring of 1937, —my next question is what further did you hear in regard to this second run product?

Mr. Rogers: Pardon me. I object to that question. It is not a question of what he heard. It is a question of did he have a talk with somebody in authority.

[fol. 140] The Court: Sustained.

Q. Did Mr. Drew communicate with you at a later time in regard to the 1937-1938 product of Metro?

A. He did. He wrote me. He did, stating in his letter——

Mr. Rogers: One moment. I object to the contents of a written document unless it is produced.

The Court: Sustained.

Q. Did you have any verbal conversation with him?

A. I also talked with him in his office.

Q. What did he tell you at the time of that conversation? Where was the conversation?

Mr. Rogers: Where and when, please?

A. It was in Mr. Drew's office in March, in the spring, shortly after I had been there about the product.

Q. You mean the spring of 1938?

A. The spring of 1937, it would be, wouldn't it?

Q. Your first conversation with Mr. Drew you said was in the spring of 1937. Now you say at a later time Mr. Drew communicated with you or that you had this conversation with Mr. Drew. I want to know when the later conversation took place, where and when.

A. It was in his office. I couldn't give you the date exactly.

The Court: The same spring?

The Witness: Yes, it was the same spring. I can't tell [fol. 141] you the exact date.

Q. What was the conversation?

A. Well, he said he had been informed that the product was open, that Schines had not taken the second run, that we could get part of it, and we did get part of it, a split on it.

Q. You got a split?

A. We got a split.

Q. Who got the other part of the split?

A. Schine.

Q. I will ask you if this is your signature (showing letter to witness)?

A. It is.

Mr. Boggess: Mark it as Government's Exhibit No. 3 for identification.

(The photostat of letter referred to, January 15, 1935, was marked as Plaintiff's Exhibit 3 for identification.)

[fol. 142] Q. Mr. Long, you mentioned that Mr. Schine had two theaters in Mt. Vernon, the Vine and the Lyric, and that the Lyric opened shortly after you opened the Memorial. How long did the Lyric continue to operate on a daily basis?

A. Up to within a short time before they tore down to build the Vernon. Two or three years, from 1935, to 1937, two years.

Q. Ran it daily for two years?

A. Except towards the last they just ran on Saturdays.

Q. After these two years were up on what basis was it run?

A. Just shortly before they tore it down they only ran it on week-ends.

Q. Saturday and Sunday?

A. Saturday and Sunday.

Q. When was the Lyric torn down?

A. It was tore down, started to tear it down in October.

Q. In what year?

A. 1937.

Q. After it was torn down what construction, if any, did Mr. Schine make on the site on which the Lyric was located?

Mr. Rogers: I object to that on the ground this is not within the witness' knowledge.

Mr. Boggess: He was right there.

[fol. 143] Mr. Rogers: He might have been right there, but he wouldn't know when somebody else bought a piece of property.

The Court: He asked what he done with the site.

Mr. Boggess: With regard to construction, I said.

The Court: Let him say what was done with the site.

The Witness: I seen it every day.

The Court: What was done with it?

The Witness: The old building tore down and a new theater put in, a new foundation. I seen it every day going up.

The Court: All right.

Q. How long did that continue before the theater was completed?

A. They opened the theater on the 31st of April of the next year.

Q. What day in April?

A. The 29th. I was thinking of the 21st. The 29th is right.

The Court: What year?

The Witness: 1938.

Q. Mr. Long, you mentioned they began tearing down the Lyric in October, 1937?

A. Yes.

Q. And that the Vernon was completed and opened the [fol. 144] last of 1938?

A. That is right.

Q. During that interval how many theaters did Mr. Schine have in operation in Mt. Vernon?

A. He had one. He had the Vine Theater only.

Q. Did you still have the same trouble in getting products during that seven months as you had before?

Mr. Rogers: One moment. I object to that as calling for a conclusion. We are entitled to evidence.

The Court: Sustained.

Q. Mr. Long, what was the admission price of the Vine Theater prior to the opening of the Vernon Theater?

Mr. Rogers: If he knows.

The Witness: 35 cents it was, the Vine, when we started.

Q. At what time of day?

A. That was for night performances. We had some cheaper matinees, 15 cents matinees.

Q. For night performances it was 35 cents?

A. 35 cents.

Q. Do you mean adults?

A. Adults. 10 cents for kids at all times.

Q. After the Vernon opened was there any change made in the admission price policy of the Vine?

A. It was cut to 30 cents.

[fol. 145] Q. Were there any later cuts? If there were, state them.

A. Later cuts after they built the Vernon, cut the Vine to 20 cents and then to 15 cents.

Q. You mentioned that after the Vernon opened the admission price was 30 cents. At what time was the next cut?

A. Well, the next cut was made after, not very long afterwards, they cut it again to 25 cents. It was cut to 25 and then to 20.

Q. At the time it was cut to 20 cents can you say how long afterwards that was?

A. Well, that was the last two years that we were there, '39 and '40, I think. Run 20 cents and some for 15 cents.

Q. What was the price on week-ends, the adults' evening price?

A. Well, at that time 20 cents was the price week-ends and 15 cents the middle of the week for quite a while.

Q. Was there any further cuts made?

A. Well, they cut to 15 cents straight.

Q. What do you mean by "straight"?

A. Well, that was for any time in the week.

Q. All the time?

A. All the time, yes.

Q. Did that policy continue until you went out of business?

A. It did until I had thrown up the theater and the price was put back to 20 cents the same week I shut down my Memorial.

[fol. 146] Q. It was put back to 20 cents?

A. Yes.

Q. Mr. Long, were there any efforts made by Schine to acquire your theater?

A. Yes.

Mr. Rogers: When, please?

Q. At any time during the six years in which you operated the theater?

A. The year before they started to build the new theater, in 1937, about the summer of '37, Mr. Custer came to me, the Assistant Manager, he was an employee of Schine's over there. He talked to me about it.

Q. What was his name?

A. Custer.

Q. Had you had occasion to meet Mr. Custer in your duties running the Memorial Theater?

A. Well, no, I had no—he only came there as a visitor. I bought pictures of him before for cash.

Q. Describe what connection he had with Schine?

A. He did and he told me.

Mr. Rogers: One moment. I move to strike it out.

The Court: What he told you is incompetent.

Q. What was his position with Schine?

Mr. Rogers: I object to that as calling for a conclusion. He said he never had any dealings with the man in a [fol. 147] business way.

The Court: Whether he claims he had or not, I don't know. If so, what is the source of his knowledge, of his employment, what the employment of this man was. How did you know what his position was?

The Witness: I had known him and he had a theater and sold us a theater in Ohio and advised me to do the same thing.

Mr. Rogers: I object to any statement of that kind made by Mr. Custer.

The Court: Strike out the last part, what this man advised him to do.

Q. You say that Schine had two theaters in Mt. Vernon?

A. Yes.

Q. According to your observation did Mr. Custer come to Mt. Vernon, make visits to Mt. Vernon in regard to those theaters?

A. Yes, he had been there in connection with theaters. I had seen him down at the other theater.

Q. You state you know he had some connection with Schine?

Mr. Rogers: One moment. Pardon me. There is no such testimony as yet. This witness has not testified that.

Mr. Boggess: I think he has.

[fol. 148] Mr. Rogers: He was not permitted to testify.

Mr. Wright: Is it your position Mr. Custer did not have any connection with Schine?

Mr. Rogers: It is my position, Mr. Wright, I am meeting a specific question with a specific objection, if you don't mind.

The Court: What do you know Mr. Custer did?

The Witness: I knew he was working for Schine. I had known the fellow for a long time from conversation and he was there at Schine's theater, and he had Schine's papers on him, and everything connected with the business of the other theater is all I knew.

Mr. Rogers: I move to strike the last part.

The Court: Everything connected with the business.

The Witness: Everything about him.

The Court: What did he do there?

The Witness: He was Assistant Manager. He came around to check up on the help and other things. I don't know what he did.

Mr. Rogers: I move to strike that, Assistant Manager.

The Court: Strike it out. I will let it stand that he was employed there at the time.

Mr. Boggess: Your ruling, your Honor?

The Court: I will let it stand he was employed by Schine [fol. 149] at the time.

Q. Mr. Long, you mentioned that you had a conversation with Mr. Custer. Go ahead and tell what the conversation was.

Mr. Rogers: May it please the Court, I object to that on the ground there is no evidence here whatever that Mr. Custer had any authority whatever to make any statement on behalf of Schine or to bind Schine in any manner or if he had any authority of any kind.

The Court: I think that is true. He was some employee. Unless it is shown what the nature of his employment was. Technically it is competent here, anybody working with Schine who went around and said what Schine was doing is competent. Other instances shown that these men were managers, in a competent capacity, it is competent to a certain extent. Unless you show something more that this man was an employee of Schine's, unless you connect it up in some other way, as far as authority is concerned.

Mr. Boggess: I believe he stated he knew that he was working for Schine.

The Court: All right.

[fol. 150] Mr. Boggess: I think that is prima facie enough to admit the conversation unless we prove it up later, subject to being stricken.

The Court: Objection sustained.

By Mr. Boggess:

Q. Did Mr. Custer have his headquarters in Mt. Vernon, or did he travel through there?

Mr. Rogers: I object to that as incompetent.

The Court: Overruled.

The Witness: He traveled through there. He had his headquarters, I think worked out of Circleville, some place down South, some of the western offices. I don't know where he worked out of.

Q. That is the extent of your information in regard to Mr. Custer's connection with Schine?

A. Yes.

Q. After you had talked to Mr. Custer, was there a call on you by any one else?

A. About two weeks after Mr. May called.

Q. What Mr. May?

A. Mr. May of the Schine Company.

Q. Do you know Mr. May's connection with the Schine Company?

A. I think he is a director of the Company.

Mr. Rogers: I move to strike it. The answer should be [fol. 151] "Yes" or "No."

Q. Answer "Yes" or "No." Do you know his connection?

A. I never seen anything with a seal on it stating what he was. All I know is he represented Schine's, and he was there and he handled the real estate and bought real estate for the new theater and handled all that stuff in Mt. Vernon for the Schine's. I knew that, seen the records.

Mr. Rogers: Pardon me. May it please the Court, if this witness bases his testimony that he seen some records, I move to strike. He does not know of his own knowledge. I move to strike his testimony, because it is based on records. The records are the best evidence.

The Court: Sustained.

Mr. Boggess: May it please the Court, I would like to read the response of Schine to interrogatory No. 3 in regard to Mr. May.

The Court: All right.

Mr. Boggess: The interrogatory is "Names and addresses of all persons who have been directors or officers of the

defendant, or persons performing similar functions at any time since August 31st, 1931, indicating in each instance [fol. 152] the office held and the term thereof?" And the answer in regard to Mr. May is "John A. May, address, Gloversville, New York, office held, Comptroller and Director, Vice President. The date of Comptroller and Director is from August 31st, 1931, to date. Date of Vice President is January 17th, 1938," which is subsequent to the time we are talking about.

Mr. Rogers: My objection is not directed to that, may it please the Court. My objection is directed to the fact this witness said he never met Mr. May before, never saw the man, didn't know a thing about him. This Mr. May may be all Mr. Boggess said he is, but we haven't connected that man with the man he had his conversations with.

The Court: What was his full name?

The Witness: L. W. May.

The Court: Are those the same initials as this man's?

Mr. Boggess: No, sir.

Mr. Rogers: This is John A. May, your Honor.

The Court: Well, it was the only May he knew connected with Schine.

Q. Would you know Mr. May if you had seen him?

[fol. 153] A. I think so, seen him here today. He is right over there behind these two lawyers, between these two lawyers (indicating).

Mr. Rogers: Is that the Mr. May you mean?

The Witness: Yes.

Mr. Rogers: Is that the man? I wanted to be sure, that was all.

The Witness: That is the man.

Mr. Boggess:

Q. You say Mr. May called on you?

A. He did.

Q. Tell the conversation that occurred between you and Mr. May at that time.

A. Well, he asked, wanted to know, if we couldn't work out some kind of deal with the Schines. We could continue to manage the theater, could work out a deal with us; and, if we didn't, they were going ahead and build a new theater.

He showed me the sketches. I told him we weren't interested.

Mr. Rogers: Could we get the date of that, Mr. Boggess?

Mr. Boggess: What date?

The Witness: Week after Mr. Custer was there.

Q. When was Mr. Custer there, about when was that?

A. That was in 1937, summer of 1937, before they tore down the old building.

[fol. 154] Q. Was anything else said in the conversation with Mr. May?

A. Nothing more than what I have stated, I guess.

Q. Did Mr. May in his conversation with you refer to Mr. Custer?

A. I think he did. I think Mr. Custer had Mr. May call.

The Court: What?

The Witness: He had Mr. May call. I think Mr. Custer sent Mr. May there.

Mr. Rogers: I move to strike that.

The Court: Not what you think. What the fact was.

The Witness: That is the facts as I remember them.

The Court: That Mr. May said Mr. Custer sent him there?

The Witness: Yes, he referred to Mr. Custer's conversation, I think, when he came in.

Mr. Boggess: I believe under that, your Honor, that would entitle us to show what conversation he had with Mr. Custer.

The Court: Well, I will receive it subject to being stricken out.

By Mr. Boggess:

Q. State the conversation you had with Mr. Custer.

A. Well, he said that he came in and he said that he had sold out to Schines and they had given him a nice position, and he said he wanted to advise us if we had the chance to deal with them, they would treat us right, and Eddie and I [fol. 155] would go ahead and run the theater and he advised me to do this. He just talked in a friendly way.

Mr. Rogers: I move to strike it, may it please the Court.

The Court: I don't think it is very material. He did advise him, nothing wrong in that, except some reasons for it, some threats or something else.

Q. There were no threats? It was just an effort to take over the theater and offering a job. Who was Eddie?

A. Eddie was my son.

The Court: Did you mean to imply he was offered a job in Schine's, and he said himself Custer would get a job?

Q. What did you say in regard to a job for yourself?

A. Custer said he made a good deal with them and he thought Eddie and I could make a good deal with him on turning over the Memorial.

Mr. Rogers: I move to strike it. The witness testified this man spoke to him in a friendly way.

The Witness: I don't know whether you call it friendly or unfriendly.

Mr. Boggess:

Q. Where did that conversation occur?

[fol. 156] A. In my office at the Memorial Theater.

The Court: I don't think it has much substance as far as that is concerned.

Mr. Boggess: The idea, your Honor, as I look at it, is that this was followed by a visit two weeks later by Mr. May.

The Court: What did he say to May?

Mr. Rogers: That is another story.

Mr. Boggess: That there is an effort by Mr. Schine through two of his agents to dispose of the competition of the Memorial Theater in Mt. Vernon.

The Court: Mere advice and selling is not of itself anything, doesn't amount to anything, nothing wrong about that.

Mr. Boggess: Nothing wrong with that, but the broaching the matter of buying the theater, that is a step toward getting a monopoly in Mt. Vernon.

The Court: I don't think the mere advice to tell him he had better sell or asking him to sell, that standing alone would not amount to anything. I will receive the testimony.

Mr. Rogers: Subject to reservation, may it please the Court.

The Court: Yes.

[fol. 157-158] By Mr. Boggess:

Q. Anything else said on that occasion, Mr. Long?
A. I don't remember.

The Court: Well, we will suspend at this time until 10:30 tomorrow morning.

(Whereupon, at 4:15 o'clock p. m., a recess was taken until Thursday, June 1st, 1944, at 10:30 o'clock a. m.)

[fol. 159] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 223.

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants.

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Thursday, June 1, 1944 at 10:30 o'clock a. m.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Special Assistants to the Attorney General. Philip Marcus, Esq., and Milton Kallis, Esq., in behalf of the United States of America.

Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

[fol. 160] Proceedings of Thursday, June 1, 1944, 10:30 a. m.

Appearances: Same as previously noted, and Seth Richardson, Esq., of Counsel for Defendants.

Mr. McKay: If the Court please, defendants' Counsel have conferred and we have decided to reserve the opening of our case.

The Court: Very well.

Mr. Boggess: May it please the Court, on yesterday we had marked for identification as Exhibit No. 2 a letter which I want to offer in evidence. It is a letter dated January 15, 1935, signed by Mr. Long, to Metro.

Mr. Rogers: No objection.

(Thereupon the letter referred to, previously marked as Plaintiff's Exhibit No. 2 for identification, was received in evidence.)

Mr. Boggess: I will read the letter. It reads: "January 15, 1935. Cadiz, Ohio.

Metro-Goldwyn-Mayer Distributing Corporation,
Cleveland, Ohio.

Attention of Manager.

Dear Sir: Please advise as soon as possible if you can furnish us second run feature product for our Memorial Theatre at Mt. Vernon, Ohio. We will be in the market [fol. 161] for product commencing for dating after March 1st. Give release dates and all other information on available subjects.

Yours truly, E. W. Long, Manager,
Memorial Theatre,
Mt. Vernon, Ohio."

Mr. Boggess: May it please the Court, we wish to introduce a contract, which we have not with us. It is a contract which was subpoenaed in our subpoena duces tecum to Metro-Goldwyn-Mayer, a second run contract which that company made with Mr. Long, dated March 20, 1936. We are informed that that is on the way here, but we just want to have the privilege of introducing it when it arrives.

The Court: Is this a copy here that you have?

Mr. Boggess: No, I haven't it at all.

Mr. Rogers: That is subject to proper objection?

The Court: Yes. Are you going to retain the witness here or do you wish to obviate the necessity of that?

Mr. Boggess: We are hoping that it arrives today.

The Court: The order does not make any difference.

[fol. 162] EMERSON W. LONG resumed the stand in behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Direct examination.

By Mr. Boggess:

Q. Mr. Long, on yesterday you testified in regard to a second run from Metro-Goldwyn-Mayer for the season of 1937-1938, in which in the end you received a split contract. I will ask you to look at this contract and state the season.

A. This is for the season of 1938-1939.

Q. Look at the signature and see if that is your signature.

A. That is my signature.

Q. Look at the date.

A. May 31, 1938.

Mr. McKay: Is that the approved date or the application date, Mr. Boggess?

Mr. Boggess: That is the approved date. The application date is May 16th.

[fol. 163] Q. With reference to the contract in which you made a split, Mr. Long, did you get a split for one year's product with Metro's second run or for two years and two separate contracts?

Mr. Rogers: May it please the Court, the contracts are the best evidence. Let us have the contract.

Mr. Boggess: I am asking for the facts.

Mr. Rogers: He is asking for the contents of a contract to which I object.

Mr. Boggess: I omit the words "second run". I don't know of anything else.

Mr. Rogers: The term of the contract.

The Court: Have you got the contract?

Mr. Boggess: We have one of them, but not the other.

The Court: All right.

By Mr. Boggess:

Q. Looking at the date of the contract that I just showed you, I will ask you if that refreshes your memory in regard to your request for the 1937-1938 product of Metro?

A. We had parts of those two years, split contract for the two seasons.

Mr. Rogers: I move to strike it as not responsive. He merely asked for a date.

[fol. 164] The Court: Strike it out. Answer the question.

The Witness: I didn't understand it.

The Court: Read the question.

(Last question read.)

Mr. Boggess:

Q. I ask you first, do you remember the date?

A. I remember the date very well. I was there with Mr. Drew and that was signed and handed to me.

Mr. Rogers: I move to strike that as not responsive.

The Court: Overruled.

Q. Now, with this date in mind, I will ask you when you asked Mr. Drew for the second-run contract of Metro for the season 1937-1938?

A. I don't get it, exactly what you mean.

Q. You stated yesterday that you had had 1935-1936 and 1936-1937 second-run products of Metro?

A. Yes.

Q. In regard to the ensuing season, 1937-1938, you mentioned asking Mr. Drew for that product?

A. Yes, we asked him for it.

Q. When did you ask for that product?

A. Well, that was in the fall.

Q. What fall?

A. Of '38. What is the date of that, '38?

Q. The date of this is May 31st, 1938.

[fol. 165] The Court: He testified yesterday that—you said first '37-'38 contract was sold later. Mr. Drew said it was open. He got a part signed, that is referring to the spring of 1937.

Mr. Boggess: Yes, that is what he said yesterday.

The Witness: We asked for one block of pictures.

Mr. Rogers: Pardon me, that is not responsive to any question before this witness. I move to strike it out.

The Court: Strike it out. At the time when you had this talk with Drew—

Mr. Boggess: For the season 1937-1938.

The Court: September, 1937, the season 1937-1938. Does that refresh your recollection?

The Witness: Yes, that refreshes my recollection, being there and talking to him when I was making this contract. I asked him for the next block of pictures for the next season.

Q. What season was that, Mr. Long?

A. That would be the following year following that contract.

The Court: The date of the contract?

Mr. Boggess: The date of the contract is May 31st, 1938.

The Court: '38 or '37?

Mr. Boggess: My question was the '37-'38 contract.

[fol. 166] Q. I will ask you this, if I may, Mr. Long. Are you familiar with the motion picture seasons, the time which each season embraces?

A. The season starts in September and it is the first three or four months of the year and the next year through for eight months, generally figuring 12 months, three one year and eight in the following.

Q. In other words, it begins September 1st of one year and ends——

A. August 31st of the next.

Q. Now, Mr. Long, you have testified that you had second-run for the '35-'36, '36-'37 motion picture season, coming down to the motion picture season of '37-'38. I will ask what you did in regard to securing the second-run product from Metro for that season?

A. Well, that is when we asked Mr. Drew for it, and I think that is when he told us it was sold.

Q. I am trying to locate the time, about the time that you made that request of Mr. Drew?

A. Well, the expiration of the contract that we had, shortly after.

Q. The last contract that you had was it '36-'37 season?

A. Yes.

Q. What would be the expiration of the '36-'37 season?

A. That would be the first of September.

[fol. 167] Q. What year?

A. '37.

The Court: You went over this yesterday.

Mr. Boggess: I went over it yesterday but I made an obvious error as shown by this contract. We did go over it, but he stated it happened in the spring of 1937.

The Court: He does now.

Mr. Boggess: He hasn't yet stated where and when.

The Court: We can get at that more simply, can't we?

Mr. Rogers: I thought he answered it was the fall of 1938 a few moments ago.

The Court: You testified yesterday, Mr. Long, they told you in '37-'38, the second run was sold to Schine. The spring of 1937 Drew said '37-'38 run was sold. Later said it was open and "We got part with Schine". You claim that was '38 rather than '37 for the year commencing '38, is that right?

The Witness: I think so, yes.

The Court: All right. You are now referring to the second run?

Mr. Boggess: Let me get his answer on that.

Q. Your answer in regard to when you made the request to Mr. Drew was when?

[fol. 168] A. In '38 instead of '37.

Q. You say that he told you it was sold to Schine. What happened after that in regard to this product, in regard to your buying it?

A. Later on a trip to Mr. Drew's office, he informed us it hadn't been sold, it was still open.

Q. What followed then, in regard to that product?

The Court: We already covered that. He testified he later said it was open and got a part from Schine.

Mr. Boggess: The only addition I was going to show was in regard to two years, I believe he has testified '37-'38.

The Court: He testified now to '38, that fixes the time.

Mr. Boggess: All right, your Honor. Your Honor, on yesterday we had marked for identification as Government's Exhibit No. 3 a letter dated January 15th, 1935, signed by E. W. Long, addressed to Paramount Pictures Corporation, which we wish to offer in evidence.

Mr. Rogers: So far as this letter is concerned, I see nothing in here objectionable to the letter, but to preserve the position of the defendants I wish to enter an objection that it is not binding on these defendants.

[fol. 169] The Court: There is no question about it being received by the addressee?

Mr. Rogers: No.

The Court: It is received in evidence.

(Letter dated January 15, 1935, previously marked for identification as Government's Exhibit No. 3 was received in evidence.)

Mr. Boggess: The letter reads, as follows: "Cadiz, Ohio, January 15th, 1935." It is addressed to "Paramount Pictures, Corp., East—5th Street, Cleveland, Ohio. Attention of Manager.

Dear Sir: Please advise, as soon as possible, if you can furnish us second-run features for our Memorial Theater at Mt. Vernon, Ohio. We will be in the market for products commencing March 1st. Give release dates and all information available on all subjects. Yours truly, E. W. Long, Manager, Memorial Theater, Mt. Vernon, Ohio."

The Court: That is to whom?

Mr. Boggess: That is to Paramount.

The Court: I thought you said that the exhibit was Exhibit 2.

Mr. Boggess: This is 3 and the Exhibit 2 was the letter to Metro.

[fol. 170] The Court: All right.

By Mr. Boggess:

Q. Mr. Long, did you make any request at a later time to Paramount for their second-run product?

A. We was in their office quite frequently at Columbus, after that once every month or two, in conference with Mr. Duke Clark, the Branch Manager, but was never able to secure any product.

Q. Well, we will see with reference to the year 1936. Did you make any request of Mr. Clark or Paramount?

A. We did.

Q. For their second-run product?

A. We did.

Mr. Rogers: May I have the season specified, Mr. Boggess.

The Court: What is that?

Mr. Rogers: I wish to have the season specified in which he requested certain products.

The Court: Yes, and what he said.

Mr. Rogers: And what he said.

The Court: That is your conclusion.

By Mr. Boggess:

Q. What was the season?
A. '35-'36.
Q. '35-'36?
A. 1935-1836.

[fol. 171] The Court: Both years or for the year 1935?
Mr. Boggess: He means the season.
The Witness: The season. It takes part of each year.
Mr. Boggess: The season 1935-1936.

[fol. 172] Q. Now, Mr. Long, tell the conversation that occurred, as well as you remember.

Mr. Rogers: May we have the date of the conversation, please, and with whom?
Q. And about when that happened?
A. Well, it was in the fall of the year, with Mr. Duke Clark.

Mr. Rogers: The fall of which year?
The Witness: Of 1935.
The Court: Before the opening of the season, you mean, before the opening of the 1935-1936 season?
The Witness: No, it was after the opening.

By Mr. Boggess:

Q. My question was in the year 1936 did you make any request?
A. We were in the Paramount offices every year that we were in Mt. Vernon.

Mr. Rogers: Pardon me for interrupting. I move to strike that.
The Court: Did you make any request of Mr. Clark for the second run? That would be for 1937-1838, wouldn't it?
Mr. Rogers: That is what I wanted to get. For what year was that, for which season? That is what I would like to get, please.

A. We requested for 1936——
Q. Wait a minute. He has suggested that I include the year. That is for the season 1935-1936?
[fol. 173] A. Yes, sir, it was.
Q. You did?
A. I did.

Q. Tell the Court about the time and with whom you had that conversation, and the purport of it.

A. Well, it was late in the fall, and the talk was with Mr. Clark, Duke Clark? I was in the offices quite frequently. I can't remember any exact dates. We kept asking for their products.

Mr. Rogers: I don't like to interrupt, but he said "late in the fall". Late in the fall of which year?

Mr. Boggess: I asked him about 1936.

Mr. Rogers: Late in the fall of 1936 he was talking about product for 1935-1936; is that what you mean?

The Court: That could not be.

The Witness: It would be for 1937-1938.

Mr. Rogers: I am terribly confused.

The Court: You were talking about 1935, as I understood you. That would be after the commencement of the season of 1935-1936?

The Witness: Yes, sir.

By Mr. Boggess:

Q. When did you ask Paramount, regardless of the year, as far as my question is concerned, when did you ask Paramount or their branch manager, for the 1935-1936 [fol. 174] product?

Mr. Rogers: I object to that question. Your question is predicated on the assumption of regardless of the year. We are entitled to have it definitely fixed as to when it was.

Mr. Boggess: I am discarding the question of the year. Prior to that time I had said when in the year 1936. My question, as I am reframing it, is when did you make a request of Paramount, or one of its employees, for the 1935-1936 second run product.

A. Well, it would be at the time that it was released, the opening of 1935, September, 1935.

The Court: Do you mean at that time or before it was released?

The Witness: It might have been before.

The Court: You said that the season commences in September?

The Witness: Yes, sir.

The Court: Prior to September or subsequent to September?

The Witness: It was after September.

The Court: That is 1935?

The Witness: Yes, sir.

By Mr. Boggess:

Q. Then after September you had this conversation. What was the conversation that you had with Mr. Clark?

A. We asked him for product, second run product for Mt. [fol. 175] Vernon, and we were informed that it was not open, they couldn't sell it to us.

Mr. Rogers: May I ask that the witness specify product for which season he asked to contract?

Mr. Boggess: I think the question embraced that.

The Court: You said this was after the season commenced, but you are referring now to the request for second run pictures of Paramount after September, 1935?

The Witness: Yes, the second runs were six months' old before we bought them for second run. They would be old, you see.

The Court: All right.

The Witness: It was after the season was opened before they would be available.

By Mr. Boggess:

Q. You mentioned awhile ago going frequently to the Exchange. Where was this Paramount Exchange?

A. The branch office was on 5th Street in Columbus, Ohio.

Q. You mentioned going there frequently?

A. Up to 1938.

Q. Did you just make this request for the second year product on one occasion or more than one occasion?

A. Several occasions.

Q. With reference to the second run product of 1936—— [fol. 176] Mr. Rogers: Pardon me. May we have the dates of these several occasions on which he made this request, and of whom he made the request?

The Court: I think he said he could not tell just the dates.

The Witness: I am unable to give the exact dates.

The Court: Covering what period of time?

The Witness: Covering the period of time from 1935 to 1938, as long as the Exchange or the branch was in Columbus. They moved to Cleveland after 1938.

Mr. Rogers: I think if it extends over a period as extensive as that we ought to have some testimony with some degree of certainty and exactitude.

The Court: You started to tell us that they told you you could not have the second run product in some conversation you said after September, 1935. You testified you had on several occasions talked with the representative of Paramount later on. Fix the time as near as you can when these talks took place, the year. It would not do just to say over a period of time. That is very indefinite, over four or five years, 1935 to 1938.

Mr. Boggess: Do you wish me to ask another question?

The Court: Yes.

[fol. 177] The Witness: I was in the office quite frequently, nearly every month. Columbus was close to Mt. Vernon.

The Court: You mean every month after September, 1935, you requested a second run picture?

The Witness: Yes, three or four times a year at least. We were playing shorts from them and we had to go over there to make dates.

Q. Did you ever get any second run product from Paramount, any contracts?

A. We never did.

Mr. Boggess: Your Honor, we are in the same position with regard to two contracts which Paramount executed with Schine, second runs, for the seasons of 1938 and 1939 and 1939 and 1940. We requested those contracts and we expect them to be here today, and when they come we expect to introduce them.

The Court: This witness has not testified to anything subsequent to 1938. He said up to 1938.

Mr. Boggess: These are contracts with which he had nothing to do, contracts with Schine.

The Court: I understand that. But I mean they are not within the period as to which he just testified. All right.

Q. With reference to the product for 1938 and 1939, Mr. [fol. 178] Long, did you request second run product from Paramount for that year, and if you answer you did state approximately the time and the place and with whom.

A. Well, the Paramount Exchange or branch had been moved to Cleveland, I think, at the close of 1938, and we contacted Mr. Clark in Cleveland, the same manager they had, for the 1938 and 1939 product, and we were unable to secure any from them.

Mr. Rogers: I think we ought to have the date of that conversation fixed.

The Witness: I am unable to give the exact dates because we were in Cleveland quite as frequently as Columbus.

The Court: Approximately when?

The Witness: Well, it was in the fall of 1938, I would say. We were up there very frequently in the winter.

By Mr. Boggess:

Q. Mr. Long, did you make any effort to get second run product from the 20th Century-Fox Company for the 1935-1936 season?

A. We did every season we were in Mt. Vernon.

Mr. Rogers: I move to strike "every season".

The Court: Strike it out.

Q. Will you please state what you did, stating the time as near as you can and the place where any conversation [fol. 179] may have occurred and with whom they occurred, in which you asked for the 1935-1936 second run product of Fox?

A. It was in Mr. Schmertz's office, the Branch Manager. I contacted him in regard to product and was unable to get any.

Q. You mentioned in Mr. Schmertz's office. In what city was that?

A. Cleveland.

Q. Can you state the purport of the conversation?

Mr. Rogers: May we have the date set first, Mr. Boggess?

Q. Approximately when did you have this conversation?

A. Well, I am unable to give the exact date. We were in there just like Paramount. Every time we were in Cleveland we were in his office when he was there.

Q. How many distributors had their branch exchanges in Cleveland of the major distributors?

A. They were all there after 1938, all the Big Five and Little Three as they call them.

Q. About how many times a year would you say that you made visits to Cleveland in regard to product?

A. It would average once every two months at least.

Mr. Rogers: May we have those months specified, please?

Mr. Boggess: He says once in every two months during

the year. I think it does not make any difference what two months.

[fol. 180] The Court: Can you specify any more particularly than that?

The Witness: I cannot give the dates because I have no way of checking up on them without I refer to contracts or any correspondence.

The Court: Proceed.

Q. Did you get the second run product for 1935-1936 from Fox?

A. We did not.

Q. With reference to the motion picture season of 1936 and 1937 did you make a request of Fox for their second run product, stating the time and place and with whom?

A. We did the same as with the previous season. We made the same request and contacted the same man.

Q. What was his answer?

Mr. Rogers: May we get the date, please?

A. The answer was the same, he was unable to get any.

Q. About the date. Mr. Rogers has asked about the date or approximate date on which you asked for the 1936-1937 product.

A. Well, it was in the fall, after the stuff was available, after it was six months old, after the first release, the first run. It was generally after the stuff was available that we made the application.

The Court: I thought that these applications were made prior to the commencement of the season. Does that refer only to first run pictures?

[fol. 181] A. That was for second.

The Court: I mean, you speak about the season. You say the practice is to make the application prior to the commencement of the season for first run pictures. Does that refer to second run?

The Witness: No, they never sold us second run until that had been run six months. That was generally the practice.

By Mr. Boggess:

Q. With reference to the seasons, the product that is shown at the beginning and from then on, at the beginning

of the motion picture season, is that the first run product or the second run product?

A. Well, it could be either one. Sometimes the second run is contracted with the first run with some companies sometimes.

The Court: These talks, you say, were after September?

The Witness: Yes, after September.

The Court: But for runs during the current year?

The Witness: Yes, some of the applications would be for older pictures. Maybe some of the second runs would be two or three years old. We asked for some of that stuff. It didn't apply exactly to any season for the second run.

Q. I don't recall if I got your answer in regard to the [fol. 182] 1936-1937 product or not.

A. Yes, it was the same as the year before, we did not get any product.

Q. With reference to the season of 1937-1938 did you ask for the second run product for that season?

A. We did.

Q. State the time, as near as you can, and the place and with whom?

A. Well, it was Mr. Schmertz and shortly after the opening of the season, after the pictures had been played awhile first run.

Q. Shortly after the 1937-1938 season?

A. Yes, sir.

Mr. Rogers: May we get an approximate date on it?

Mr. Boggess: He says that is as near as he can tell.

The Court: Ordinarily how long would the first run cover the period?

The Witness: We were playing second runs from 45 to 90 days after the first run. The contracts varied. There were no two exactly alike. It is too indefinite to make a statement.

Mr. Rogers: My question was directed to when the conversation was.

The Court: A month or two months after?

The Witness: Yes, a month or two months after.

[fol. 183] Mr. Rogers: That would be a month or two months after September 1st, I take it.

By Mr. Rogers:

Q. If I understand you, the contract can be made at any time, but the product is exhibited after the first run product?

A. Yes, that is right.

Q. Did you make a similar request for the 1938-1939 season?

A. I did.

Q. With the same party?

A. The same party.

Q. What was the answer?

A. We were unable to secure anything.

Q. About what date did you make it?

A. It would be in the fall after the season was open, after the stuff was available, after the first run had been played.

Q. The fall of what year?

A. The fall of 1938.

Q. I ask you to look at that (showing letter to witness). Is that your signature?

A. It is.

Mr. Boggess: I offer it in evidence.

Mr. Rogers: My objection to this is that it is not binding on the defendant Schine.

[fol. 184] The Court: Is it marked for identification?

Mr. Boggess: No, I was going to offer it in evidence.

The Court: Mark it first for identification.

(The photostatic copy of letter of August 23, 1926, referred to was marked as Government's Exhibit No. 4 for identification.)

Mr. Boggess: I offer it in evidence.

The Court: Received.

(Thereupon the photostatic copy of letter previously marked as Government's Exhibit No. 5 for identification was received in evidence.)

Q. Is the signature to that letter your signature, Mr. Long (showing letter to witness)?

A. It is.

Mr. Boggess: I offer it in evidence.

Mr. Rogers: I object to it on the same ground, not binding on the defendants.

The Court: Received.

(Thereupon the letter dated August 5, 1937, from E. W. Long, Mgr., to I. J. Schmertz, referred to was received in evidence and marked Government's Exhibit No. 5.)

Q. Mr. Long, with reference to the second run product of R. K. O. what efforts, if any, did you make toward securing that product from their distributor, telling the [fol. 185] time and the place and with whom you had any conversation?

A. Well, we met them in their offices. The manager there was Mr. Greenblat. We contacted him every season. He was in Mt. Vernon when the product was open. We were never able to secure any product.

Mr. Rogers: I move to strike that, and I ask for evidence as to time.

The Court: Strike it out, It is a conclusion of the witness. You will have to state what was said to you by the agent.

Q. Did you ask for the second run product of R. K. O.? Was your request made at Mt. Vernon or some other place?

A. At Cleveland.

Q. About what time?

A. In the fall of 1935.

Mr. Rogers: Which product are we speaking about?

Q. The product of what season?

A. 1935-1936.

Q. With whom did you have that conversation?

A. Mr. Greenblat was the branch manager.

Q. What was Mr. Greenblat's title?

A. Branch manager.

Q. Tell the result of that conversation.

The Court: What did he say, not the result of the conversation. Tell what he said.

[fol. 186] A. He said they were unable to sell us any.

Q. Now, with regard to the product——

Mr. Rogers: Mr. Long's voice dropped. Did I understand him to say he had that conversation in the fall of 1935?

The Court: Yes, that is what he said.

Q. With reference to the second run product of R. K. O. for 1936-1937, did you make any request—just answer that yes or no—for that product?

A. I did.

Q. When and where and with whom did you make that request?

A. With the same man, Mr. Greenblat, and also to their salesmen on the road for these companies who were soliciting. They would come in and solicit business from us.

Q. With reference to Mr. Greenblat, where did you have your conversation with him?

A. In the Cleveland office of the R. K. O.

Q. Can you give us any idea of the time when you had that conversation?

A. I can't give you any specified dates. It was generally when the stuff was available, late in the fall.

Q. Late in the fall of what year?

A. That would be the fall of 1936.

Q. What did Mr. Greenblat tell you in that conversation in regard to whether or not you could have it?

[fol. 187] A. Well, he promised once, I remember, that he would take it up with New York; but there was no result; we never got anything from them.

Q. You never got the product?

A. Never got the product, no.

Q. You mentioned also regarding the salesman. Do you mean the R. K. O. salesman?

A. The R. K. O. salesman came to our place in Mt. Vernon occasionally, but we never could make any contract with him.

Q. Where did you make those requests?

A. That would be in the office of the Mt. Vernon theatre, the Memorial.

The Court: Why would they come to your office if they wouldn't sell you any of the product?

The Witness: They did that quite frequently. The Paramount man was in there every month, and we never did any business with him. Nearly every month we were in business the Paramount man came in, but we never did any business. He said he would take it up with his Company, but that is as far as we got. We were buying short subjects.

The Court: From him?

The Witness: From all of them. It was to get dates. [fol. 188] That was the reason they came in more than anything else.

Mr. Boggess:

Q. By shorts you mean one reel pictures?

A. One or two reel products. We played them from nearly all the producers.

Q. With reference to the product of 1937-1938, second run, what effort did you make to secure that product from R. K. O., stating the time and the place?

A. It was in the fall of 1937 after the product was available that we called at their offices in Cleveland, Mr. Greenblat, but we were unable to get any contract. We never had a contract with them.

Q. With reference to the season of 1938-1939?

A. The same thing. We contacted Mr. Greenblat and were unable to get any of the product.

Mr. Rogers: May we have the date of that?

The Witness: In the fall of 1938, after the season opened.

The Court: You speak of "we". Who do you mean by that?

The Witness: My son sometimes. We worked together. He was my assistant. He would be in Cleveland and go with me sometimes.

Mr. Rogers: We cannot hear that.

Q. Repeat that.

A. I said my son sometimes went with me. That is the [fol. 189] reason I used the word "we". That covers what the Court requested, I think.

Q. Mr. Long, did you receive that letter (handing letter to witness)?

A. I did.

Q. Through the mail?

A. Through the mail, yes.

Mr. Rogers: My objection to this is two-fold. One is that there has been no sufficient identification of the signature of Mr. McEvoy, or that this letter emanated from Mr. McEvoy, and further on the ground that it is not binding on the defendants. It purports to be a letter written by Mr. McEvoy to Mr. Long.

The Court: Is there any question raised about the signature?

Mr. Rogers: Yes.

Mr. McKay: Your Honor, I know Mr. McEvoy. I won't say it is not his handwriting but it does not look like it to me.

Mr. Rogers: I do not think it is his signature.

Mr. Wright: It was produced, of course, from the files. In any event, I do not suppose it matters whether Mr. McEvoy himself wrote that signature on there. I suppose his secretary or somebody else may have written it. There [fol. 190] is not any contention that the letter is a forgery, is there?

Mr. Rogers: There is not a contention, but there must be proof that Mr. McEvoy was the man who caused this letter to be written. Somebody might have undertaken to write this letter in his behalf and sign his signature. I don't know. I object to it on the ground that its authenticity has not been established nor has the authenticity of Mr. McEvoy been established.

The Court: Objection overruled.

Mr. Rogers: Will that be subject to connection?

The Court: Yes.

(The copy of letter of September 13, 1935, E. L. McEvoy to E. W. Long, referred to, was received in evidence and marked Government's Exhibit No. 6.)

Q. Did you receive this letter from the mails, Mr. Long (showing letter to witness)?

A. I did.

Mr. Rogers: May it please the Court, I wish to note the same objection on the ground that there has been no authentication of the signature of Mr. McEvoy, and on the ground [fol. 191] that it is not binding on the defendant.

The Court: Is there proof that he was the manager of the office?

Mr. Boggess: We had some proof yesterday. He is one of the gentlemen that Mr. Long testified he called on in the general offices of R. K. O. in New York City.

The Court: I will receive it.

(Thereupon the copy of letter of May 21, 1936, E. L. McEvoy to E. W. Long, referred to, was received in evidence and marked Government's Exhibit No. 7.)

Q. Mr. Long, you stated yesterday that your lease was for five years on the Memorial?

A. The original lease was.

Q. At the conclusion of that lease did you retain possession of the Memorial? In other words, did you make another lease?

A. We made a new lease for one year with an option for two. We stayed the one year.

Q. How was that lease determined? Was it just awarded to you?

A. No, they asked for bids. There were bids taken. It was advertised and bids taken as it had been five years before when we opened the house.

Q. And you were successful in getting .e lease?

A. We were successful in getting the lease that year.

Q. I ask you if that is your signature (showing letter to witness)?

A. It is.

[fol. 192] Mr. Rogers: My only objection is it is not binding on the defendants.

The Court: What is the materiality of it?

Mr. Boggess: The materiality is this: The part of the lease that we intended to introduce is one paragraph, giving Mr. Long an option of one year. He stated two years. But it is an option for one year. And we intend to follow this up by showing he gave notice of this option, but did not receive—was unable to obtain renewal of the lease for one year. The materiality is this: That he did not discontinue his operation of the theater of his own free will, that he lost his lease was the reason he discontinued and to show who did get the lease.

The Court: The first lease ran for five years. Have you got the lease for one year more?

Mr. Boggess: Yes, the first lease expired December 31, 1939, five years after its date. This is a lease for an additional year for the year 1940, and this lease is this option for one year which is given to him with certain conditions.

The Court: Do you mean he did not get it after the [fol. 193] expiration of five years?

Mr. Boggess: He got this lease, the one-year lease at the end of five years.

The Court: Six years. That gives him the option for another year, does it?

Mr. Boggess: Yes, sir. This is not the five-year lease.

The Court: I understand.

Mr. Boggess: This is the one-year lease which gives him an option of an additional year.

The Court: It gave him the option. Did he exercise it?

Mr. Boggess: I am going to offer evidence that he did notify them—take advantage of his option. I will read it, if this is admitted.

The Court: I will receive the lease, anyway. You will have to follow it up to show if there is any connection.

Mr. Boggess: This is a lease dated December 31, 1939, between the Board of Trustees of the Memorial Building of Knox County, Ohio, first parties, and E. W. Long, second party.

Mr. Rogers: May it please the Court, in order to save the record, instead of marking this voluminous document, inasmuch as Mr. Boggess only wants one paragraph in evidence, may we have that one paragraph read into the record?

[fol. 194] Mr. Boggess: That is agreeable.

The Court: All right.

(Thereupon the first paragraph on page 2 of the lease dated December 31, 1939, referred to, was received in evidence and marked as Government's Exhibit No. 8.)

Mr. Boggess: Page 2 of the lease: "Paragraph (d) First party grants to second party the right, the second party's option, but upon not less than three months prior written notice by second party to first party, to renew this lease for an additional and further term, providing terms that may be agreed upon, of one year from and after the expiration of the initial term thereof."

The Court: All right.

Mr. Boggess:

Q. Is that your signature, Mr. Long (showing letter to witness)?

A. It is.

Mr. Rogers: May it please the Court, I object to the admission of this letter on the following grounds: 1. That by the terms of paragraph "d" that has been read in evidence, this witness did not have an option as claimed, [fol. 195] because by the very language of that clause it

says, "The first party grants to second party,"—the first party being the grantor and second party the witness,—"The right, the second party's option but upon not less than three months prior written notice by the second party to the first party, to renew this lease for an additional and further term, providing terms may be agreed upon of one year from and after the expiration of the initial term thereof."

Now, that is merely the right to negotiate for the right for a new lease for one year, but not the option for one year.

The second objection is that whatever may be the relationship between this witness and the landlords under that lease, whatever complaint he may have against them is surely not competent, is not material and certainly not binding on these defendants.

The Court: It wouldn't be unless they were connected in some way with the refusal to renew.

Mr. Rogers: Yes, sir.

The Court: Of course, on the question of this—is this letter supposed to be in?

[fol. 196] Mr. Rogers: Yes, sir.

The Court: It may be competent, it may be followed up by showing negotiations bearing on the terms of a new lease.

Mr. Rogers: If received at all, your Honor would receive it subject to proper connection.

The Court: Yes.

Mr. Boggess: It was not my purpose to go into the equities of either side of the lease. My purpose is to show that he gave Mr. Long——

The Court: That is the only part——

Mr. Boggess: I am going ahead and ask him to whom he delivered this.

The Court: All right. Is this a copy or is this the original?

Mr. Boggess: This is the original. (handing letter referred to to the Court).

The Court: I will receive it. Of course, the question raised by counsel is that the renewal applies for just the term, and whether it is an option or not an option.

Mr. Boggess: My object is to show it was his purpose to continue in operation the Memorial Theater.

The Court: Of course, you have to show some connection with the construction of that intention.

[fol. 197] Received.

(Thereupon the letter dated September 30th, 1940, which was referred to, was marked as Government's Exhibit No. 9 in evidence.)

The Court: Is there any question about the delivery?

Mr. Boggess: I was just going to ask him to whom he delivered this option.

The Court: All right.

By the Court:

Q. To whom did you deliver that and when?

A. It was delivered to Mr. Sperry.

Q. Who is he?

A. A member of the Board, a trustee.

Q. When?

A. Approximately the date of the letter, at the time it was written.

The Court: Received. You say a member of the Board, you mean a member of the Board of Trustees?

The Witness: A member of the Board of Trustees who built the theater.

Mr. Rogers: There must be some little error, because this letter is marked "Copy."

Mr. Boggess: I told you this was the original. I didn't notice the word "Copy" up there. Mr. Sperry is in the [fol. 198] room. His testimony will follow Mr. Long's and we can make that connection.

The Court: You can't get the original from the Trustees' office?

Mr. Boggess: I presume so. I don't know whether he has it with him or not. He lives at Mt. Vernon.

The Court: Of course, there are other papers produced here. I don't want to have any question.

Mr. Boggess: You want me to go ahead and show delivery of the option?

The Court: Is there an objection?

Mr. Rogers: In view of this situation I must then press the objection that this is not the original, and this could not have been delivered to the trustees and has constantly been in the possession of this witness.

The Court: Sustained.

Mr. Boggess:

Q. Mr. Long, after the opening of the Vernon Theater, which I believe you stated yesterday opened in April, 1938, what was the admission price to that theater between then and the time you ceased operation of the Memorial?

A. Of the Vernon?

Q. Yes, sir.

A. 35 cents most of the time. They had 25 cents balcony.

[fol. 199] The Court: You told us about that yesterday. He has been over that yesterday. The Mt. Vernon opened and the price cut from 20 to 15.

Mr. Boggess: That was the Vine, your Honor, we discussed then, the Vine.

The Court: What are you asking now?

Mr. Boggess: Just asking the admission price of the Vernon.

The Court: All right.

By Mr. Boggess:

Q. Mr. Long, when did your last lease expire?

A. Prior to 1940.

Q. When did you cease operation of your theater?

A. We closed the theater with exception of a date we had for a local contract, not pictures, on December 10th.

The Court: 1940?

The Witness: 1940, December 10th.

By Mr. Boggess:

Q. What year?

A. 1940, it would be.

Q. Why didn't you continue operating your theater for the remaining 21 days of the year?

Mr. Rogers: That is immaterial, may it please the Court.

The Court: I will let him answer. The answer cannot be a conclusion. He will have to state what the facts were.

[fol. 200] Q. What was your reason, Mr. Long?

A. The reason was we were unable to secure product that was attractive enough that we could afford to keep open.

Mr. Boggess: That is all.

Cross-examination.

By Mr. Rogers:

Q. When did you start operating your theater at Cadiz, Ohio?

A. 1924.

Q. And you operated that theater continuously since then up to what date?

A. It is still operating up to the present time.

Q. You are still operating it?

A. My daughter is Assistant Manager. I give very little personal attention to it now.

Q. Up to what date did you continue to give personal attention to that theater?

A. I gave personal attention to that theater all the time. I am still manager but I delegate most of the time to my daughter.

Q. Up to what date did you make it your real job, your full-time job?

A. When I went to Mt. Vernon, we took over the management, that was in 1935.

[fol. 201] Q. So far as Cadiz is concerned, you have the only theater in that town, don't you?

A. We didn't have until we opened there.

Q. What other theater did you have in the town after you opened it?

A. There was a second-story building that had been condemned.

Q. Was that in competition with you?

A. It was for a while.

Mr. Wright: I assume, your Honor, he is going into this matter with Mr. Long as his witness. It is beyond the scope of the direct. We don't have any objection to him going into it providing it is understood that he is going into it with him as his witness.

Mr. Rogers: This witness was interrogated about Cadiz in the very early part of his testimony.

The Court: I will receive it.

Mr. Rogers:

Q. How long did that other house remain your competition?

A. I can't remember how long it was, not very long, a couple of years, I think.

Q. From what year to what year?

A. Dropped it in 1926, I would say, the winter of '26.

Q. That is from 1924 to 1926?

[fol. 202] A. Yes.

Q. During that period was your house the first-run house?

Mr. Boggess: Your Honor, I have an objection. The direct testimony on that was just the simple questioning in regard to his experience in the motion picture business and he said after Cadiz, and that was about the extent of the testimony in that regard.

The Court: I think it is proper cross-examination. Objection overruled.

Mr. Rogers: May I have the question, please.

(Last question read.)

The Witness: We had some first-run, and the other house had some first-run. We didn't have it exclusive.

Q. After that competitive house went out of business in 1926, your house in Cadiz was the only house in Cadiz, was it not?

A. No, we ran the other house for a while. We bought and ran the other house, the second-run house.

Q. In other words, in 1926, you bought out the competitive house, didn't you?

A. Yes, we made a deal with them.

Q. How long did you run that competitive house after you bought it?

[fol. 203] A. We ran it until it was closed on account of the building being condemned. We ran it less than a year.

Q. You continued to run it then until 1927, is that right?

A. About that. Still, it was late in 1926. We ran it less than a year.

Q. When did you acquire it?

A. Well, we acquired it, they ran about eighteen months, two years after we opened the other theater. I can't give any exact date.

Q. Don't you remember how long you ran that house?

A. We ran it less than a year.

Q. From about when until about when?

A. I can't tell you. I am unable to give you the date.

Q. In addition to acquisition of this other house, you had control of Cadiz, didn't you?

A. Yes, naturally.

Q. After you closed that house down that you acquired, then you again had control of Cadiz, didn't you?

A. Well, we had the only theater there.

Q. That is what I mean. You had the only theater in Cadiz?

A. Yes.

Q. So from 1927 down to the present time, you have operated the only theater in Cadiz, is that right?

A. That is right.

Q. You had the town all to yourselves?

[fol. 204] A. We have another theater, another location there, but we never opened it up.

Q. Whatever happened in that town, one or two theater, you have control of that town?

A. No, I can't say we have control of it.

Q. Is there any other theater?

A. No, but there are other people there and they can build theaters.

Q. I want to get the conditions as they are and not what they might be.

The Court: I think that is sufficient.

Q. Who did the booking for you out in Cadiz?

A. I did the booking mostly.

Q. When you booked your products for Cadiz, where did you go to book your pictures for each respective season?

A. We booked them generally at Cadiz, never went to Cleveland when——

Q. Wherever you booked them, at Cadiz for the season of 1926-1927, when did you book them?

A. Book them or buy them?

Q. Buy them?

A. Buy them as soon as they are offered. They were generally available the summer previous, the last of that year and the next eight months of the next year.

Q. In other words in the summer of 1927 you booked for [fol. 205] the season beginning September 1st, 1927 to August 31st, 1928, is that right?

A. That is right.

Q. Because that product was made available at that time?

A. Yes, first-run product.

Q. First-run product?

A. Yes.

Q. You did that every year continuously, did you not?

A. Yes.

Q. In the summer for the beginning of the succeeding season?

A. Yes, correct.

Q. What picture service do you book in Cadiz, which Companies?

A. We run mostly all the major companies and some independent Western companies. Some years we don't run all of them, but as a rule we run what we can take care of.

Q. As a rule how many of the major companies do you book in Cadiz?

A. We book really all the major companies with the exception of one or two, an occasional year we don't have——

Q. With the exception of one or two you wouldn't book in any particular year, if anybody in Cadiz wanted to see those pictures they would have to go to some other town to see them?

A. Yes, if we didn't run them.

[fol. 206] Q. If you didn't contract for them you didn't get them, is that right?

A. Yes, O. K.

Q. It was, as you say, the practice of these companies to contract and offer for sale their products for the coming year in the summer of the current year. When was it you actually started to really operate the Memorial Theater in Mt. Vernon?

A. Well, we opened there the 31st of December, 1934, yes, beginning of 1935.

Q. Before you took over the operation of that theater you say that you made a bid to the Trustees of Knox County and that the Trustees of Knox County held this property in trust for the county, is that right?

A. That is right.

Q. That was done on advertised bids by the Trustees of Knox County, was it not?

A. It was.

Q. And anybody could come in and bid for that theater, is that right?

A. That is right.

Q. Can you tell me when it was you appeared before the Board of Trustees to make the bid for the lease on that theater?

A. Well, it was prior to—it was a couple of months be-
[fol. 207] fore it was to be let and opened in the fall of 1935.

Q. A couple of months before the end of December?

A. Yes.

Q. 1935?

A. 1934, it would be opened the first of '35.

Q. 1934 that would be?

A. Yes.

Q. How did you present your bid, in writing?

A. Yes, we presented our bid in writing.

Q. And at that time did you have any competition on the bid?

A. I think there were 60 or 70 bidders on it. There were quite a number.

Q. And you were the successful bidder?

Mr. Richardson: I didn't understand that. 60 or 70?

The Witness: Yes, quite a number of bidders.

Mr. Rogers:

Q. And you were the successful bidder, is that right?

A. That is right.

Q. As I recall your evidence you said when you were awarded the lease, it was awarded to you on three years fixed with an option for two, is that right?

A. That was the first contract, yes.

Q. You occupied those premises then under that lease from January 1st of 1935 to December of 1939, is that right?

[fol. 208] A. That is right.

Q. When you got your additional one year after that that was from January 1, 1940 to December 31, 1940. Was there another advertising for bids at that time?

A. There was. It was advertised at that time.

Q. Did you again present bids to the Trustees of Knox County?

A. We did.

Q. Did you obtain the theater by competitive bids?

A. Yes, we did.

Q. How many bidders were there at that time, if you remember?

A. There were only two or three, as I remember.

Q. And you succeeded in obtaining the theater on your bid again?

A. I did.

Q. When your term expired in 1940, or shortly prior thereto, was there another advertisement made by the Trustees of Knox County offering the theater again?

A. Yes, there was another advertisement put in.

Q. Did you submit a bid?

A. We didn't. We had exercised our option.

Q. Did you submit a bid?

A. No, we didn't submit a bid. We only exercised our option as we had before.

Q. One moment. You understand that provision in this [fol. 209] lease read into the record, the lease of December 31st, 1939, don't you?

A. Yes, sir.

Q. You understand under that provision you merely had the right to negotiate for the lease?

A. It was the same clause on the lease we had that we exercised two years on the first five-year lease.

Q. One moment. You mean you had the identical clause——

A. I don't know whether it was identical or not.

Q. Please let me finish, Mr. Long. You mean you had substantially or identically the same clause in the prior lease?

A. That is right.

Q. Under that clause you did submit a bid?

A. We——

Q. You did submit a bid, didn't you?

A. We merely called attention to the option and expected it to be continued.

Q. Didn't you tell us a few moments ago, Mr. Long, under that prior lease there was another hearing held by the Board of Trustees that you submitted a bid, and there were about three other competitive bidders and you won out on the bid?

A. That was after the five years expired.

Q. That was for the one year?

[fol. 210] A. For the one year.

Q. You said there was a clause in that prior contract the same as this?

A. Yes. No, we didn't submit any bid for the renewal of the five-year lease?

Q. But you did submit a bid for the renewal of the one year?

A. No, we did not submit a bid for the renewal of the two-year lease.

Q. Let us get back to the first year's lease.

A. We submitted a bid after the five years was up. We only submitted bids twice for the five and for the renewal of one.

Q. You never submitted a bid at the end of that one-year renewal?

A. No, we generally exercised the option as we had before.

Q. When you say you exercised the option as you had before you sent some sort of letter?

A. The letter was read here.

Q. That is what you mean?

A. Yes.

Q. You knew after you sent that letter the Trustees of Knox County advertised again for bids, didn't you?

A. Yes, we did afterwards.

Q. You knew it at the time, didn't you?

A. Yes, we knew it.

[fol. 211] Q. Did you submit any bid?

A. No, we didn't think it was necessary.

Q. Did you appear before the Trustees?

A. We tried to, but never could get a conference. We made several attempts and before we knew anything it was advertised, before we could talk to them.

Q. It was advertised for competitive bidding again?

A. Yes.

Q. And you did not submit a bid, is that right?

A. No, we asked for a conference based on our——

Q. Please.

Mr. Rogers: I move to strike the rest.

The Court: Yes, it is stricken out.

Q. You remember being interrogated by Mr. Boggess yesterday about the termination of your occupancy of this Memorial Theater, don't you?

A. I think so.

Q. Now, do you remember Mr. Boggess asking this question of you and you giving this answer—at page 145—after he questioned you about what you claim was cutting the price of admission on the Vine Theater, after opening of the Vernon, he said, "Did that policy continue until you went out of business?" And your answer was "It did until I had thrown up the theater and the price was put back to 20 cents the same week I shut down my Memorial." Do [fol. 212] you remember making that answer?

A. Yes.

Q. Do you remember saying you threw up the theater?

A. Well, that term——

Q. Do you remember saying that?

A. I don't remember. That is when we closed it.

Q. Please answer my question. Do you remember making that answer?

A. I don't remember anything about the throwing up.

Q. You don't remember having made such an answer?

A. If I made it, that is on the record.

Q. I am reading it to you out of the records. Do you remember making that answer?

A. I don't remember.

Q. You say you don't remember making that answer?

A. I don't remember what I said. That is when I closed the theater.

Q. Do you mean you don't remember what you said yesterday?

Mr. Boggess: He said he does not remember.

The Witness: Used several terms for the same thing there.

Q. I want to know if he remembers what he said. He says he doesn't remember what he said. Does that answer equally apply to other testimony you gave yesterday?

Mr. Boggess: We submit that is an argument, your Honor.

The Court: Let him answer.

[fol. 213] By the Court:

Q. Do you remember any parts of your testimony yesterday?

A. Yes, I think so, yes, but sometimes I might use a different term for the same thing. I think I remember very clearly what I *said* yesterday.

Q. You said yesterday that in December, 1934, you went to M.G.M.'s office and you spoke with Mr. Drew, is that right?

A. Yes, I was there quite frequently.

Q. And that you were seeking first-run product at that time?

A. That is after——

Q. Is that right?

A. Yes, that was in '35, was it?

Q. Wait a moment, will you please. Is that right? I am asking you.

A. What were you asking?

Q. Will you please be patient? Did you ask him for first-run product?

A. Yes, I did in '35 and '36.

Q. You say you asked him for first-run product for '35-'36?

A. Yes, we asked him for first-run every time.

Q. No, I want to know what you asked him for in '34?

A. I might have asked him for both first and second-run.

Q. I don't know what you might have done. Mr. Boggess [fol. 214] made it clear you were talking about first-run products and he was. In December, 1934, is it true that you went to the office of M.G.M. and spoke to Mr. Drew in reference to first-run products for the Memorial Theater?

A. I think that is right. We asked him for first-run the first time we were there.

Q. What year were you asking for that product for?

A. That is the year of the opening.

Q. I am asking you what year. You asked him you wanted first-run product for what season?

A. '35-'36.

Q. You asked him for that in December, 1934?

A. In December, '34, would be for '35 and '36.

Q. One moment now. I want to get this clear and please answer my question clearly and briefly. Do you mean in December, 1934, you went to Mr. Drew and asked him to sell you first-run products of Loew's for the season '35-'36?

A. Yes. We asked him for products. That was before we opened.

Q. I am not asking whether you asked him for products. I am asking you whether you asked him for first-run?

A. Yes.

Q. For the season '35-'36?

A. Yes.

[fol. 215] Q. And that he told you in December, 1934, that the product for the season '35-'36 was already sold to Schine?

A. I think that is right.

Q. Don't you know as a matter of fact, the product for the season '35-'36 was not even offered to exhibitors until the summer of 1935?

A. Well, you twist me up on that.

Q. No, I am not twisting you at all. I just want you to answer my question.

A. Yes, you did. That stuff wouldn't be offered until it was made.

Q. '35-'36 product wasn't offered until May or June of 1935, is that right?

A. That is right.

Q. And yet you claim in December, 1934, he told you that product had already been sold?

A. That should have been '35. '35. That would be an impossibility.

Q. Just a minute. Let us see if we can get this straightened out. Then you say you went to see him in December, '35, to talk about product for '35-'36, first-run?

A. Yes.

Q. First-run?

A. Well, we asked whatever he had that was available. Might have been first, might have been second.

[fol. 216] Mr. Rogers: Will your Honor please ask the witness to be responsive to my question?

The Court: Yes, just answer the question.

Q. What I want to get fixed here, Mr. Long, is which story of yours is correct. You have given us two now, Your first story as given to Mr. Boggess on direct-examination was you went to Loew's, you saw Mr. Drew in December of 1934?

A. Should have been 1935.

Q. Pardon me. Let me finish the question. I am taking your testimony as you gave it to Mr. Boggess. You testified you went to Loew's in December, 1934, spoke about first-run product for your Memorial Theater in Mt. Vernon, Ohio?

A. 1935.

Q. One moment. I will tell you what your testimony is, and you are talking, you were talking about '35-'36 product, is that correct? First run?

A. That would evidently be an error. I couldn't talk about '34—would have to be in '35.

Q. Then your answer is, if that was your testimony that was an error?

A. That was an error, yes, sir.

Q. Now, then, you say you must have gone to him in December, '35 to talk about products for '35-'36?

[fol. 217] A. That would be more reasonable, yes.

Q. Don't you know that the product was made available in May, as you just testified for the May, 1935, for the '35-'36 product?

A. If I didn't have the theater, I didn't get the theater until the fall.

Q. Regardless of when you got the theater, you know that product was made available, first-run, in May of 1935?

A. It might have been.

Q. Don't you know that?

A. I couldn't say. I wasn't after it.

Q. When you bought your product for Cadiz you bought it in the spring of '35, didn't you?

A. I can't tell you whether I did or not.

Q. Don't you remember that?

A. No, sometimes I didn't buy it until certain dates in September.

Q. Didn't you testify a short time ago in reference to Cadiz you always went in and made your contract in the summer of the current year?

A. No, I didn't say I ever went in from Cadiz.

Q. One moment. You said you went in in the summer of the current year in every instance to make your deals for the forthcoming year?

A. In Cadiz?

[fol. 218] Q. Yes.

A. No, made our deals in Cadiz. We never went in from Cadiz.

Q. I am talking about when you made your deals.

A. We made them any time in the summer, sometimes in the end, the first of the year.

Q. Made them in the summer?

A. Any time in the year, didn't buy the stuff until very late sometime in the next year.

The Court: Are you inquiring about Cadiz or Mt. Vernon?

Mr. Rogers: I want back to Cadiz for a moment. Now, I am going to come to Mt. Vernon.

Q. Then when you went to Mr. Drew, now you say in December, 1935, did you talk about first-run product for the year '35-'36, and he told you it was sold to Schine, that was not unusual, was it?

A. No, don't say anything unusual.

The Court: Normally in the spring of that year.

The Witness: Yes, they would buy it further ahead maybe than I did.

Q. Doesn't that equally apply, you say you saw Mr. Schmertz over at Fox, you said to Mr. Boggess in December, 1934. Do you wish to change that now to '35?

A. That should have been '35. It couldn't have been any other time.

[fol. 219] Q. When he told you the first-run product for '35-'36 had already been sold, that wasn't anything unusual?

A. No, nothing at all.

The Court: Where did you engage your product when you took possession of the Mt. Vernon Theater in January, 1935? Was it January, '35?

The Witness: Yes.

The Court: And where did you get your product when you opened up there?

The Witness: In '35? Well, that would still have to be '34. We opened in '35. That '34 had better stand then.

Mr. Rogers: Now, all right.

Q. Which do you want to stand? We have had three answers. Let us get one.

A. We opened the theater in '35, and we were trying to buy the product three or four months before. Now, that is all I can say now.

[fol. 220] Q. Well, now, let me see if——

The Court: You would buy first run products if they were sold in the spring before that? You say they were sold in the spring?

The Witness: I wouldn't know whether they were sold or not. I would ask. They might still be open yet in the fall. I wouldn't know.

Q. Do you seriously mean that in Mt. Vernon, Ohio, that the major companies wouldn't have their product sold for

the 1935-1936 season in the summer of 1935, that they would wait until January to sell it in Mt. Vernon?

A. No, they would have it sold, naturally.

Q. Let us see where we stand. You have got me as much confused as you seem to be yourself and that is pretty bad [fol. 221] for the two of us. Let us see if we cannot straighten this out. Is it now your claim that you went to Mr. Drew in M.G.M. and spoke to him in December of 1934? Tell me, is that so?

A. That was before we opened the theatre.

Q. That would have been before you opened the theatre; is that right?

A. Yes, sir.

Q. It is definite in your mind that you went in and spoke to him?

A. That is before we went to Mt. Vernon. Their salesman had written from Cadiz several times.

Q. Never mind about that. I am just talking about one conversation you had with Mr. Drew about which you so readily testified to Mr. Boggess. Let us see if you cannot be as helpful to me as you were to Mr. Boggess. I don't know how helpful you were to him up to the present, but let us see if we cannot understand each other. Is it your testimony that before you opened the Memorial Theatre, and in the month of December, 1934, you went to Loew's and you had a talk with Mr. Drew about first run product? Is that right, as far as we have gone?

A. I think we were in his office at that time before we opened the theatre.

Q. And you had a talk with him about first run product; is [fol. 222] that true?

A. It might have been.

Q. Do you know? You testified to Mr. Boggess that all you spoke about was first run product.

A. That is all we had in mind. We didn't use any second product until two years after.

Q. I want to know what you said.

A. I don't remember any more than I said now.

Q. That is what you said now?

A. Yes, sir.

Q. So that when you testified under Mr. Boggess' examination yesterday that you went to Mr. Drew in December of 1934 and spoke about first run product, you are not sure whether or not that testimony is accurate; is that right?

A. Well, ten years is a long time.

Q. I don't care whether twenty years is a long time. All I want to know is whether that testimony was accurate.

A. I gave it as it came into my mind. I tried to state the facts.

Q. Yesterday?

A. Yes, sir.

Q. And now it comes into your mind differently today?

A. It might.

Q. I want to know what your frame of mind today is.

A. I can't tell.

[fol. 223] Q. Today your frame of mind is that you don't know; is that right?

A. You admitted awhile ago you were about in the same fix that I was.

Q. You put me there. What I want to know is what your frame of mind is today.

The Court: What do you mean by "frame of mind"? Do you mean do you want to change your testimony?

Q. Yes, do you want to change your testimony?

A. No, I don't think so.

Q. You don't want to change the testimony you gave yesterday or you don't want to change the testimony you gave this morning? Yesterday you said it was 1934 and this morning you said it was 1935.

The Court: What is your best judgment as to the date, whether it was 1934 or 1935?

The Witness: It was before the opening of the theatre, that is all.

The Court: You went to Mr. Drew and sought to engage the first run product?

The Witness: Yes, sir.

Q. What I want to know is, did you talk first run product in December of 1934 with Mr. Drew?

A. I did. I said that distinctly to him. We didn't expect to play anything but first run when we opened up.

[fol. 224] Q. A few moments ago you said you weren't sure whether you spoke about first run product or not. That is definite, is it?

The Court: He has answered it.

Q. For which season were you speaking in 1934 about first run product?

A. That would be after we opened there for product after 1935—January 1st.

Q. Do you mean for the season of 1934-1935?

A. Well, we didn't open until 1935.

Q. I am asking you for which season?

A. I don't remember whether I mentioned season. I asked for pictures that we could use in the opening.

Q. First run?

A. I answered that.

The Court: He said so. You mean for a period commencing January 1st. At that time you asked for first run pictures?

The Witness: Yes, sir.

Q. Did you specify the first run of any season?

A. I don't think I did. Why should I? It wasn't necessary.

Mr. Rogers: I ask to strike that.

The Court: Yes. Just answer the question.

Q. Please answer the question. Did you specify any season, any season's product?

[fol. 225] A. I don't remember if I did.

Q. You said, as I recall it, that Mr. Drew informed you at that talk that he had already sold the first run product; is that right?

A. He said that Schines were playing it.

Q. One moment. I am taking your testimony you gave yesterday. Your testimony was that he told you he had sold the product; is that right?

A. He said it was sold, yes.

Q. For which season?

A. Well, for the time I wanted the pictures. I don't remember the season.

Q. That would be the season 1934-1935, wouldn't it?

A. I wanted them after 1935. I didn't care what season it was. I wanted first run pictures after I opened.

Q. You told me that Mr. Drew told you the product was sold. Which product did he tell you was sold, which season?

A. I don't remember.

The Court: It would be sold ordinarily in the spring of 1934?

The Witness: Yes. Sometimes we bought it later.

The Court: Your claim is that you were trying to get first run pictures in December. Normally then they would have been sold?

The Witness: Yes, more than likely they would, yes, sure.

Q. You were asking for a product that you knew in the [fol. 226] ordinary course of business would have been sold by that time?

A. Yes, I would anticipate it would be sold. There was nothing to prevent me from asking.

Q. You testified, as I recall, that on July 25, 1935, you went to the Department of Justice?

A. In Washington, that is right.

Q. In Washington?

A. In Washington.

Q. And on the same day you came to New York?

A. No, I was in Washington the day before. I went up on the night of the 24th and was in New York on the 25th.

Q. As I recall your testimony, your testimony was in——

A. No, I stopped in Washington. I was in New York on the 25th.

Q. You came to New York, you say, definitely on July 25, 1935?

A. That is the day I was there.

Q. You went to the 20th Century-Fox office and had a talk with Mr. Eddie Granger, as you called him?

A. That is right.

Q. And that was without question on July 25, 1935?

A. It was on that same trip, yes. That is the only time I was over there.

Q. When you spoke to Mr. Granger, as you say, on July [fol. 227] 25, 1935, with reference to what product were you speaking to him?

A. 20th Century-Fox.

Q. For what season?

A. First run product.

Q. For what season?

A. I don't remember. I bought what was available first run for Mt. Vernon. I told him when we were going to open and when we needed the pictures.

Q. You mean you told him on July 25, 1935, you were going to open?

A. No, that was after we were opened. We had been running since the first of the year.

Q. So that you weren't telling him you were about to open?

A. No, that is wrong. You misled me on that.

Q. Please don't say I misled you.

A. Well, you did, in a way.

Q. Then I apologize.

A. I apologize to you too.

Q. I am trying to get facts. You are sure that was July 25, 1935?

A. I am pretty sure it was.

Q. You are absolutely sure, aren't you?

A. Yes, it was on my birthday.

Q. And you spoke to him about first run pictures?

[fol. 228] A. Yes, sir.

Q. For the Memorial Theatre?

A. Yes, on 54th Street in New York, in his office.

Q. I am asking an entirely different question. You spoke to him about first run product in connection with the Memorial Theatre in Mt. Vernon?

A. Yes.

Q. And you didn't tell him which season you were going to ask for the first run?

A. I told him we were running a theatre there and were in the market for pictures, we had been running since the first of the year.

Q. Didn't you tell him you wanted them for the coming year?

A. Naturally I would tell him I wanted them for the coming year.

Q. Did you tell him that?

A. No.

Q. Did you discuss terms with him?

A. No, he said there was nothing available, he couldn't sell any pictures.

Q. In July he told you that the 1935-1936 season product——

A. I don't remember whether he mentioned season or not. He said their product was sold and being played in Mt. Vernon.

Q. You didn't speak about season?

[fol. 229] A. I don't remember definitely whether I did or not.

Q. Do you remember whether he spoke about season?
A. I don't remember whether he did or not.
Q. You remember, Mr. Long, making an affidavit in this case at the time an application was made for an injunction, don't you?
A. I think I made an affidavit.
Q. Do you remember about when it was that you were called upon to make that affidavit?
A. I do not.
Q. Can you give it to me approximately?
A. No.
Q. Well, now, somebody in the United States Attorney's office spoke to you in preparation of the affidavit, didn't he?
A. I don't remember. More than likely somebody called and got it.
Q. Who drew the affidavit?
A. I didn't.
Q. Was it drawn by your lawyer?
A. No.
Q. Was it drawn by the Department of Justice?
A. I don't know.
Q. Did somebody just come in and hand it to you?
A. No. I think some F.B.I. man, or some fellow from the Department, came in and got it.
[fol. 230] Q. Did he have it all drawn and hand it to you?
A. No, he came in to talk to me and made notes and then had it written up.
Q. Did you tell him all of the facts contained in that affidavit?
A. I answered his questions and told him everything I could think of.
Q. Did you tell him all the facts contained in that affidavit?
A. I suppose I did.
Q. Did you read it over carefully before you signed it?
A. I read it over.
Q. Carefully?
A. I might have been interrupted.
Q. Whether or not you were interrupted, did you read it carefully?
A. I read it over.
Q. Did you sign it and swear to it?
A. I signed it.
Q. You testified yesterday that at the time you saw Mr.

Eddie Granger on July 25, 1935, he told you, in effect, that his company would not turn down $50,000 worth of business of the entire Schine Circuit for a possible $5,000 worth of business he might get out of you?

A. He told me that in his own office.

Q. On July 25, 1935?

[fol. 231] A. At the time I was in the office.

Q. You said it was at the time on July 25th?

A. It was at the time I was in New York.

Q. You said you knew it was July 25th because it was your birthday?

A. That is right.

Q. Let me read to you what you said in your affidavit that you gave the Government, which was sworn to on August 18, 1939. You said: "For example, in the fall of 1935 I called upon Mr. Eddie Granger in New York City, who was Sales Manager for Fox Film Corporation, in order to secure some product on first run. Mr. Granger indicated that it made no difference how large or fine my theatre was, and the fact that I may pay more than Schine in Mt. Vernon for Fox product was of no importance. He stated that his Company could not turn down $50,000 worth of business over the entire Schine Circuit for $5,000 worth in Mt. Vernon, and he refused to give me any consideration for Fox product on first run."

Did you remember reading that in that affidavit before you signed it?

A. I think that is substantially what I told the man.

Q. Do you recall stating in that affidavit that it was in the fall of 1935 that you had that talk with Mr. Granger and not July 25, 1935?

[fol. 232] A. That is the only time I was in New York, on July 25th.

Q. Then if that be so that statement in that affidavit is not accurate?

A. What is the date of that?

Q. Of the affidavit?

A. Of the affidavit.

Q. You signed and swore to this affidavit on the 18th of August, 1939.

A. Well, that is all right.

Q. So that it is still all right?

A. Yes, sir.

Q. How many talks *with* you have with Mr. Granger on the subject, one or two?

A. Just one. That refers to the only talk I ever had with him.

Q. In this affidavit you said it was in the fall of 1935?

A. Well, that is very indefinite. I didn't give him the exact date. The 25th of July is getting around towards fall, July or August.

Q. It is?

A. Yes, sir.

Q. I thought it was the height of the summer.

A. We call it early fall out among the sticks.

Q. In Cadiz or Mt. Vernon?

A. In Cadiz.

[fol. 233] Q. You call it the height of the fall in the middle of July?

A. Yes, the maple leaves are turning.

Q. In other words, when you made this affidavit you weren't impressed with the fact that this talk was on your birthday? You weren't impressed with the fact at the time?

A. No, it was a hot there then as it is here today.

Q. In other words, your memory is better today about that date than it was in August, 1939?

A. It might have been. It might be.

Q. You just testified there was nothing about terms discussed with Mr. Granger at that time, at the time of that talk you had with him?

A. I don't know what you mean by "terms".

Q. Price, any terms.

A. No, we didn't talk any price terms.

Q. He said nothing about price?

A. No, sir.

Q. Not a word?

A. No, not a word. I don't think we got that far.

Q. You say in this affidavit, don't you, that Mr. Granger indicated that "it made no difference how large or fine my theatre was and the fact that I might pay more than Schine in Mt. Vernon for Fox product was of no importance"? Was there any talk at that time about you paying [fol. 234] more for first run product than Schine did at Mt. Vernon?

A. There was never mentioned any price for pictures. Is that what you mean by terms?

Q. You are an old motion picture man. What do you understand by contract terms?

A. The terms can be several things.

Q. Price is one of the terms?

A. Yes, price is one of the terms.

Q. That is the most important term, isn't it?

A. Well, sometimes.

Q. Now, with reference to your picture service in Mt. Vernon from 1935 on, I assume from your testimony that you were constantly looking for pictures and couldn't get pictures, and that you were suffering from a lack of pictures; is that right?

A. Yes, the right kind of pictures.

Q. In dealing with these major companies and the Little Three companies, as we have called them, you were endeavoring to buy for Cadiz and Mt. Vernon at the same time, weren't you?

A. We were for awhile.

Q. And weren't you during that period using the treasury of your Cadiz theatre in order to try to get product for the Mt. Vernon Memorial Theatre?

A. We might have mentioned it. They knew we were connected.

[fol. 235] Q. Never mind about mentioning it. Didn't you in the course of your talks with some of these majors and the Little Three tell them that if they gave you product for Mt. Vernon you would give them a deal in Cadiz?

A. Naturally. That is your policy.

Q. You did that; is that right?

A. Yes.

Q. And you continued to do that, didn't you?

A. Yes, sir.

Q. And you did that in letters to them too, didn't you?

A. We bought them for both places.

Q. You did that, didn't you?

A. Yes, we did some.

Q. In or about the month of October or November, 1935, were you at that time suffering for the lack of product?

A. Which theatre? You have been talking about two theatres. Mt. Vernon?

Q. Mt. Vernon.

A. We always suffered for lack of product there.

Q. In October or November do you say you were suffering for lack of product? That is October or November, 1935.

A. I answered your question.

Q. Let me show you this letter. Is that your signature (showing letter to witness)? Just tell me if that is your signature.

[fol. 236] Mr. Rogers: I offer this letter in evidence.

Mr. Boggess: We have no objection.

(Thereupon the letter of November 8, 1935, referred to, was received in evidence and marked as Defendants' Exhibit D-1.)

Q. Do you remember saying in this letter, D-1, dated November 8, 1935, which you just identified, "We have all the product we can use until after the first of the year, when we will have some dates for outstanding products"?

Mr. Boggess: Your Honor, I suggest that he tell the witness the date of that letter.

Mr. Rogers: I just did. November 8, 1935.

Q. This is a letter you wrote to Mr. Schmertz of the 20th Century-Fox Corporation, Cleveland, Ohio. Do you remember saying that in that letter?

A. Yes, that is correct.

Q. And do you remember also saying in that letter: "We have been standing them up and have them coming especially with our stage shows we now put on once a week. We are reliably informed that at least two of the major producers are getting pretty sore on account of the double feature." When you used that expression, "We have been standing them up" what does that mean in the theatrical profession?

A. That means we have some people in the house.

[fol. 237] Q. Doesn't that mean that you are playing to capacity and having standees as well?

A. For stage shows.

Q. "Standing them up" means that you are playing to full capacity and having standees as well, doesn't it?

A. Yes, sir.

The Court: That letter is to whom?

Mr. Rogers: That letter is to 20th Century-Fox, Mr. Schmertz.

Q. I show you this letter, being a letter addressed to Mr. E. L. McEvoy, R. K. O. Building, New York, dated October 30, 1935, and I ask you if that is your signature?

A. That is right. That is my signature.

Mr. Rogers: I offer it in evidence.

(The letter referred to was received in evidence and marked as Defendants' Exhibit D-2.)

Q. I show you a letter bearing date April 14, 1935, addressed to Manager, R. K. O. Distributing Corporation, Cleveland, Ohio. Is that your signature?

A. Yes, that is ours.

Q. That is your signature?

A. Yes, sir.

Q. And I show you a letter bearing date April 14, 1935, to Mr. Schmertz, Fox Film Corporation, Cleveland, Ohio, and ask you if that is your signature?

[fol. 238] A. That looks like it. That is my signature, all right.

Mr. Rogers: I offer those two letters in evidence.

(The letter of April 14, 1935, referred to was received in evidence and marked Defendants' Exhibit D-3.)

(The letter of April 14, 1935, referred to was received in evidence and marked Defendants' Exhibit D-4.)

Q. I show you letter bearing date April 20, 1938, addressed to Mr. Drew, Loew's, Inc., Cleveland, Ohio, and I ask you is that your signature?

A. That is.

Mr. Rogers: I offer it in evidence.

(The letter of April 20, 1935, referred to was received in evidence and marked Defendants' Exhibit D-5.)

Q. And I show you a letter bearing date April 12, 1938, purporting to be sent to you by Loew's resident manager, addressed to you. Do you remember receiving that?

A. Yes, it is in the file.

Mr. Rogers: I wish to offer that in evidence.

(The letter of April 12, 1938, referred to, was received in evidence and marked Defendants' Exhibit D-6.)

Q. I show you letter bearing date April 14, 1935, ad-
[fol. 239] dressed to Manager, Warner's First National Pictures Corporation, Cleveland, Ohio, and I ask you if that is your signature?

A. It is, sir. Yes, sir.

Mr. Rogers: I offer it in evidence.

(The letter of April 14, 1935, referred to, was received in evidence and marked Defendants' Exhibit D-7.)

Q. With reference to Defendants (Exhibit D-2, which is the letter bearing date October 30, 1935, which you wrote to Mr. E. L. McEvoy, you say, "Are also holding a place for your product at Cadiz providing we can get together here and as promised we are giving you first chance in taking care of us." You remember putting that in the letter, don't you?

A. Naturally.

Q. You remember saying that to somebody in R. K. O.?

A. Yes.

Q. If they would give you product in Memorial you would hold the product open in Cadiz and if they didn't hold it open in Memorial you wouldn't give them any product in Cadiz?

A. That was ordinary buying propaganda.

Q. You mean that that was part of your buying propaganda?

A. That was part of my buying propaganda. Of course I was the only one that practiced that.

Q. Well, that is refreshing on this warm day. And in that
[fol. 240] same letter you of course remember saying, "We have more than doubled our attendance in the last month with our 1,100-seat house at 20 cents and 30 cents admission"; is that right?

A. That is right.

Q. And that was a fact, wasn't it?

A. Yes. We were attempting to buy product and we weren't making a poor showing.

Mr. Rogers: I move to strike that.

The Court: Yes. You have answered that and said it was correct.

A. Yes, that is correct.

Q. During that period that you are speaking of who was your opposition in Mt. Vernon on October 30 of 1935?

A. Why, the Schine people.

Q. What did they have there by way of theatres in the way of opposition?

A. In 1935?

Q. Yes.

A. They had the Lyric and the Vine.

Q. Now I wish to read you from a letter, Defendants' Exhibit 3, that you wrote to Mr. Schmertz of Fox Film Corporation, dated April 14, 1935, and do you recall saying in that letter: "This is now a home-owned and managed theatre and our patronage has been growing by leaps [fol. 241] and bounds since our opening the first of the year. We will contract for your entire product and show on a percentage basis all outstanding pictures, also buy contingent product for community theatre at Cadiz, Ohio."? You remember that, don't you?

A. Yes, sir.

Q. That statement in that letter there, to the effect that your patronage has been growing by leaps and bounds since the day you opened, was an accurate statement, wasn't it?

A. I was attempting to buy product——

Q. Answer my question. Was that statement in that letter an accurate statement?

A. Yes, sir.

Mr. Boggess: I think he ought to be allowed to explain his answer.

The Court: He should answer the questions. He only asked him about one statement.

Q. With reference to Defendants' Exhibit 4, which was a letter written by you on April 14, 1935, to R. K. O. Distributing Corporation, you have that same statement as you had in Defendants' Exhibit 3 I just read, about the patronage growing by leaps and bounds, that you would make a deal for Mt. Vernon contingent on your making a deal in Cadiz. You remember that?

[fol. 242] A. Yes, that was just a showman's——

Q. That was accurate, was it?

A. That was showman's accuracy.

Q. Was that accurate?

A. That was showman's accuracy.

Q. When you say that what do you mean? Was it or was it not accurate?

The Court: The question is whether you meant what you said or not.

A. I meant what I said, certainly.

Q. That is all I want to know.

The Court: We will suspend now until 2:15.

(Whereupon a recess was taken until 2:15 o'clock P. M.)

[fol. 243] After Recess, 2:25 o'clock P. M.

APPEARANCES:

As before noted.

EMERSON W. LONG resumed the stand on behalf of the Government and testified further as follows:

Cross-examination (continued).

By Mr. Rogers:

Q. I show you this letter bearing date October 7th, 1935, written by you to Mr. E. L. McEvoy, R. K. O. Building, New York, and ask you if that is your signature?

A. It is.

Q. I show you this letter bearing date October 30th, 1935, written by you to Mr. E. L. McEvoy, R. K. O. Building, New York, and ask you if that is your signature?

A. That is it.

Mr. Rogers: I offer these.

Mr. Wright: I might say, your Honor, we have submitted to counsel photostats of all of the material we have intended to offer. I understood this morning they had done the same with us, but I now learn they have not previously submitted photostats of the material they propose to offer [fol. 244] to us, and I assume we should have a reciprocal arrangement.

Mr. McKay: Up to the present time we have not taken any papers from the distributor's files. The only papers we have are papers taken by the Government from the distributor's file. I called Mr. Clagett at noon time if we

did take any papers from the distributor's file, we would furnish the Government with photostats.

Mr. Wright: These are ones you furnished us?

Mr. McKay: These are ones we furnished you about three years ago.

Mr. Wright: I didn't understand you. I understood these were photostats which you had made yourselves.

Mr. McKay: No, we haven't photostated a single document up to the present time.

Mr. Wright: You say they were furnished three years ago.

Mr. McKay: Yes, when you first examined the distributor's file.

Mr. Wright: In any event, I think it would speed it up if you would let us know in advance the ones you intend to offer and save a lot of time in court.

[fol. 245] Mr. McKay: The ones we want to use depend very largely on your direct-examination.

The Court: Proceed.

(Thereupon the two letters referred to were received in evidence, the latter dated October 7th, 1935, was marked Defendant's Exhibit D-8, and the letter dated October 30th, 1935, was marked as Defendant's Exhibit D-9 in Evidence.)

By Mr. Rogers:

Q. I show you Defendant's Exhibit 6, which is your letter of April 12th, written you by representative of Loew's, addressed to you in which he says as follows: "——

Mr. Wright: What is that, April 12th what year?

Mr. Rogers: 1938.

"I appreciate you told me in reference to having an abundance of pictures available for you at this time, and being booked up to July 1st, still having six of our pictures to play." Do you recall having made that statement?

The Witness: There is no signature on this.

Q. Regardless of whether there is a signature, you testified before the recess that you recalled receiving the original of that letter?

A. Yes.

[fol. 246] Q. Do you recall having made that statement?

A. Yes, the one about Will Rogers in there.

Q. You recall having made that statement, don't you?
A. Yes.
Q. Now, I refer you to a letter written by you on April 14th of 1935, to Warner First National Picture Corporation, in which you say——

Mr. Wright: Have you got the exhibit number?
Mr. Rogers: Exhibit No. Defendant's 7.

"This is now a home-owned and managed theater, and our patronage has been growing by leaps and bounds since our opening the first of the year."
Now, that statement was an accurate statement, was it not?

The Witness: You read that to me before and I answered.

Q. This is Warner?
A. The letters are identical.
Q. Wherever you wrote that in any of these letters, you say the letters are identical, and that statement is true, is that right?
A. That is right.
Q. In that letter you say, "We will contract for your entire product and show on a percentage basis all outstanding pictures also be contingent with product for the [fol. 247] community theater at Cadiz, Ohio."
You said that in the other letters as well, haven't you?
A. I don't remember. I think that is the same letter as read before.
Q. I believe I read you a letter to one of the other companies.
A. It is identical.
Q. In other words, you made the same proposal to Warner's?
A. Yes.
Q. If they would give you products at Cadiz, you would arrange for product at Mt. Vernon?
A. Yes.
Q. And you made one contingent upon the other?
A. That is right.
Q. I wish to read to you from Defendant's Exhibit 8, which is a letter of October 7th, 1935, written by you to Mr. E. L. McEvoy, R. K. O. Building, in which you say, "Just a tip to inform you that the Schines have lost their case here in both courts where they have been trying to renew

their lease for the Lyric Theater, with a view of rebuilding".

You remember that paragraph in that letter, don't you?

A. I think so. That was gossip there at that time.

[fol. 248] Q. What did you mean by the "Schines having lost their case here in both courts"? What case was it that you referred to?

A. I don't just remember. It was some case that was up there, some hearing they had. I don't recall exactly what it was now.

Q. Do you recall there was some litigation pending in connection with this Lyric Theater site and Schines were trying to do something to clear the title so they could make a deal?

A. It might have been.

Q. And they were doing that you knew with a view of rebuilding, weren't they?

A. Just what that states.

Q. That was so, wasn't it?

A. Yes.

Q. So you knew as early as October 7th, 1935, that the Schines were really contemplating the rebuilding of the Lyric Theater?

A. They talked about building a new theater from the first, from the first we went in there.

Q. And eventually they did build?

A. That is right.

Q. And that was the Vernon Theater?

A. Yes.

[fol. 249] Q. Until this litigation was out of the way they couldn't rebuild?

A. No, those things always come up.

Q. As a matter of fact, weren't you trying to get that Lyric location away from them?

A. Not at all.

Q. And to build there in that location yourself?

A. Not at all. I never had it in my mind.

Q. You are definite about that?

A. Sure.

Q. You had no such idea?

A. No, I had enough when I had the Memorial.

Q. Let me read this: "One of the parties interested has come to us with a proposition to build on a good location to take the place of the Lyric and, inasmuch as our present

lease has a clause protecting us against such a contingency, we are considering same."

A. Might have been some other place. I don't say it was at the location, though.

Q. Let me repeat that, in that paragraph you say, "A proposition to build on a good location to take the place of the Lyric"?

A. That might be.

[fol. 250] Q. So that you were contemplating——

A. I don't say it was on that lease.

Q. I asked you if you were contemplating building another theatre in Mt. Vernon. You said you were.

Mr. Wright: Somebody asked him if he was trying to get the Lyric away from Schine and he said no.

Q. This witness said he had no idea of building any other theatre, that he had more than enough with the Memorial and was not considering building in Mt. Vernon.

A. That is right. I had people come to me and asked me if I would be interested, and I mentioned that.

Q. You said you wouldn't consider it?

A. Yes.

Q. Don't you say in this letter, "We are considering the same"?

A. We might have talked it over. That would be considering it, whether we were considering doing it or taking it under advisement and not doing it.

Q. Just what was it? Did you take that proposal under advisement?

A. I don't remember.

Q. Did these people speak to you?

A. There was some people spoke to us about it.

Q. When you say "one of the parties interested has come to us with a proposition to build in a good location to take [fol. 251] the place of the Lyric." Who did you mean as one of the parties interested?

A. I don't remember.

Q. Do you remember who that was?

A. No, I don't. I don't recall.

Q. Now I wish to read to you from Defendants' Exhibit 9, a letter dated October 30, 1935, written by you to Mr. E. L. McEvoy, R. K. O. Building, New York, in which you say: "We have more than doubled our attendance in the last month with our 1,100-seat house at 20 and 30 cents admissions." Was that an accurate statement?

A. That could have been because it wouldn't take much to have doubled it for awhile there.

Q. Was that an accurate statement?

A. Yes, an accurate statement, sure. We might have had three one night and six when we doubled it.

Q. Did you ever have three people in that theatre?

A. Yes, we had three. One show we only had two people.

Q. You had only two in the show?

A. Yes.

Q. You continued to run the theatre with only two people in the show?

A. Yes, we ran a matinee there one afternoon with only two people.

Q. You ran another time with only three people at a matinee?

[fol. 252] A. I wouldn't say. Two or three.

Q. Did that ever happen in the evening?

A. No it didn't happen in the evening.

Q. You also said in that letter, "We are holding a place for your product in Cadiz, providing we can get together here and as promised we are giving you first chance in taking care of us." Hadn't you told the R. K. O. people that you would consider making a deal with them for the Memorial if they made a deal with you for Cadiz?

A. Yes, that is right?

Q. You did?

A. Yes, that is all right.

Q. Do you know a Mr. Hathaway connected with Warner's?

A. Yes, I remember him.

Q. You knew him quite well, didn't you?

A. Yes, he was one of those windy boys selling pictures.

Q. He used to call on you quite often, didn't he?

A. Yes, he did.

Q. Do you remember him calling on you in September of 1936?

A. That is a long time ago. I can't recall anything in particular in connection with it.

Q. Do you remember him coming to you in about the middle of September, 1936, to try to get you to consider a proposition of buying second run Warner pictures?

A. I don't remember.

[fol. 253] Q. You don't remember that?

A. No.

Q. Do you remember him calling on you again on September 30, 1936?

A. Where at? Mt. Vernon or Cadiz?

Q. I am talking about the Memorial Theatre now all the time, remember.

A. I don't remember of ever seeing Hathaway in the Memorial Theatre at Mt. Vernon.

Q. Well, when he called on you where would he call on you—at Cadiz?

A. He might have.

Q. Do you remember whether it was at the Cadiz house or whether it was at the Memorial house? Do you recall having a talk with him on or about September 30, 1936, when he offered to sell you second run product?

A. I don't remember. Six or eight of those salesmen come in every day. I didn't try to remember it.

Q. I am talking about feature product now.

A. Yes, that is right.

Q. Did all of these salesmen come in trying to sell you the feature products?

A. They might have talked to me about it.

Q. I am talking about really selling it and offering to sell you.

[fol. 254] A. I was playing first run when I first started. I was not interested in second run then. When was that—1935?

Q. 1936.

A. I was not interested.

Q. In other words, you had so much first run that you weren't interested in buying second run?

A. We were trying to get first run.

Q. You had enough product at that time, you weren't talking about second run?

A. We had plenty of the kind. It was a poor kind.

Q. Whatever it was you had enough of it and you weren't going to talk about second run Warner product; is that it?

A. Not at that time.

Q. Do you remember this same Mr. Hathaway calling on you on December 1, 1936, with reference to your Memorial Theatre and offering to sell you Vitagraph-Warner Bros. pictures second run and you refusing to discuss any second run picture with him?

pay any attention to him. He was a fellow that I didn't talk to very much.

Q. All I want to know is a very simple situation. Do you remember him calling on you on December 1, 1936, and offering you second run Warner pictures?

A. Yes, sir.

[fol. 255] Q. And you said you refused to discuss it?

A. Yes, I remember him.

Q. Do you remember that?

A. Not that especially. No, I can't remember that especially.

Q. Do you remember on that occasion telling him that you were getting enough first run product to keep yourself going?

A. I might have told him that, yes. That was the time we were running some stage shows.

Q. Well, do you remember Hathaway calling on you on December 17, 1936, with reference to the Memorial Theatre and closing a deal with you selling you 16 doubles and 14 singles of the 1935-1936 product?

A. That was short subjects. That was not features.

Q. I am saying features now.

A. How could it be a single feature? What do you mean by that? That refers to short subjects entirely. That is not features at all.

Q. You say those were shorts?

A. Those were shorts.

Q. You remember buying them, do you?

A. Yes, I bought some shorts from him. I think that is very plain.

Q. Well, do you remember on January 22, 1937, Hathaway calling on you and trying to sell you second run Warner [fol. 256] Pictures at that time?

A. I don't remember.

Q. You don't remember?

A. No.

Q. Well, do you remember at that time telling Hathaway that he couldn't sell you any second run as you were getting plenty of clear product?

A. I might have told him that. I was the buyer and he was the seller.

Q. In other words, you might have told him that?

A. I might have told him that.

Q. Is it your best recollection that you did or that you didn't?

A. I might have told him that. That is all I can answer. With six or eight of those fellows around your neck you will tell them anything to get rid of them.

Q. In other words, you mean you didn't care whether or not you told them the truth? Is that it?

Mr. Boggess: He didn't say that.

A. I didn't say that.

Q. You said that you said a lot of things to these men to get rid of them?

A. I did. And they gave me a lot of hot air to get me to talk to them. It was dog eat dog. You know what a film salesman is.

[fol. 257] Q. Maybe I do and maybe I don't. But what I say is when you told them anything to get rid of them——

A. They worried the life out of you.

Q. All I am asking you is, did you tell them anything, whether it was true or not?

A. It was just the theatre parlance. It was just anything to get rid of them. That is what they handed to me and I gave them back the same ing.

Q. Was the theatre parlance that you passed out true or was it anything that came into your mind?

A. The show business is the show business.

Q. Please answer my question.

A. I did as the Romans did. When I got in the show business I did what the other fellow did. I don't think I went to extremes.

Q. Just tell me if what you told this man was truth or fable?

A. It was on the ragged edge.

Q. Neither truth nor fable?

A. It was on the border line. It just depended on the mood.

Q. What mood you were in?

A. What mood I was in.

Q. When you told them you had plenty of product was that truth or fable?

A. In part that was truth.

Q. How much of it was truth?

[fol. 258] A. I have never figured it out, I was never very good in percentage.

Q. Do you remember Hathaway calling on you in February, about the 17th of February, 1937?

A. Yes, shortly before Warners' let him out.

Q. I am talking about February 17, 1937.

A. Yes, sir.

Q. And discussing with you selling you second run for the current year. Do you remember that?

A. I don't remember.

Q. Do you remember at that time saying to him that you wouldn't consider that, that you were thinking of buying nothing but second run for the following year; that that is all you wanted?

A. I might have said that.

Q. Do you remember Hathaway calling on you on April 19, 1937, trying to make a deal with you, trying to have you buy Warners' second run for that season or for that year?

A. Where was he calling, at what place?

Q. Well, either Cadiz or at Mt. Vernon. Do you remember seeing him at that time?

A. I can't remember seeing him at Mt. Vernon.

Q. Can you remember seeing him at Cadiz?

A. He used to come in there, yes.

Q. Can you remember seeing him, as I stated, on April 19, [fol. 259] and he speaking to you about——

A. What year was that, 1938?

Q. 1937.

A. I was not in Cadiz at that time.

Q. Where were you at that time?

A. I expect I was in Mt. Vernon.

Q. Do you remember seeing him in Mt. Vernon at that time?

A. I don't recall talking to Hathaway, no.

Q. You don't recall?

A. No.

Q. He may have called and you don't recall it?

A. He may have called there. There are six or eight salesmen in in one day.

Q. Let us stick to Hathaway. Do you remember at that time, that is April 19, 1937, you telling him that you wouldn't consider buying any second run features at that time, that you were running first runs and 26 Metro second runs?

A. What year was that?

Q. That was 1937.

A. Yes, we had Metro at that time.

Q. Do you remember telling him that?

A. I think so.

Q. Do you remember telling him you wouldn't buy any second runs?

A. Yes, sir.

[fol. 260] Q. Now, do you remember Hathaway calling on you on July 15, 1937, at Mt. Vernon, and offering you second run Warner feature product?

A. He might have been there and offered me some stuff. I can't recall what it was, whether it was current stuff or old stuff, or anything I was interested in. I can't remember it.

Q. He spoke about second run, didn't he?

A. Well, it might have been two or three years old second run.

Q. Regardless of its age, he spoke to you about second run?

A. He might have.

Q. Do you remember your telling him that you weren't interested in buying anything except first run, that you had Columbia bought at the time and all you wanted was first run? Do you remember that?

A. I might have told him that.

Q. Now, do you remember Hathaway calling on you at Mt. Vernon on September 2, 1937, to discuss second run product with you? Do you?

A. I don't remember. I think that is the time I signed a report card for him. He never stopped. He went on through and sent a report card in from there. I think that is the time he did that.

Q. Don't you remember at that time you closed a deal with Hathaway under which he sold you Warner feature [fol. 261] products for the season 1937-1938, second run?

A. 1937-1938?

Q. Yes.

A. Possibly that is right. I think we did buy at that time.

Q. That was on September 2, 1937?

A. Where is the copy of the contract?

Q. You must have [redacted] Do you have it?

A. I don't recall having it.

Q. I was going to ask you if you had a copy of the contract.

A. No. I would like to see it.

Mr. Rogers: Does the plaintiff have a copy of that contract?

The Witness: I would like to see it.

Mr. Rogers: Do you, Mr. Boggess?

Mr. Boggess: Not that I know of. I haven't seen it.

Q. But you do remember making a contract for the entire season, second run, Warner?

A. I think that is the time we bought some from Warner. I don't remember when it was. I think it was the winter of 1938 we did that.

Q. You made your contract right at the beginning of that season, didn't you?

A. I wouldn't remember.

Q. You don't remember that?

A. No, I don't remember making a contract with Warners' with Hathaway at any time. I think what Warners [fol. 262] we bought we bought in Cleveland. Are those Hathaway reports?

Q. Yes.

A. Well, I wouldn't count much on those.

Q. When you say you wouldn't count much on them you do remember you made a deal, don't you?

A. He left the Company shortly after a lot of his reports went in.

Q. You did make the deal for the second run, didn't you?

A. If you show me the contract I can answer. I can't remember.

Q. Mr. Wright has been kind enough to hand me a letter bearing date September 18, 1937, written to you by Vitagraph, M. A. Mooney, Branch Manager. Do you recall receiving that letter?

A. It doesn't say whether it is features or shorts. It does not mean a thing. It does not mention features there. It might have been all short subjects. There isn't a thing to indicate that I bought a feature picture from that letter. I still think that was all for shorts. That is straight—honest.

Q. You don't recall closing any contract for 1937-1938 for features?

A. No, I do not at that time. I think it might have been later. It might have been later that year we bought some.

Q. Do you recall closing a deal for a season's product of [fol. 263] Warner's second run?

A. We bought a split—we bought, I think, 30 pictures. We bought from Warners for two years, I think. I don't know whether it started that year or the year after. I can't remember. I haven't got the contracts here. I haven't got the contracts or don't remember having them. I don't think they are in the files here. I never asked for them. I looked for them and I don't think I have any. I think that is shorts. And I never saved a contract on shorts.

Q. Is it your definite recollection that the contract that was forwarded to you under this letter of September 18, 1937, was a contract for shorts?

A. It might have been, from that letter there. I can't remember it being different. That letter doesn't say features. If it was features I would have mentioned it in the letter. It doesn't say features. There might have been some other letter connecting it up, but I can't recall it.

Mr. Wright: The contracts will settle the issue. They certainly can be produced by subpoena. The distributor will have copies of the contracts, even though he has not got his copies. I suppose the simplest way to settle that—

[fol. 264] Mr. Rogers: May I inquire if the distributors do have them? If they do, it will save time.

Q. Now, I show you contract memorandum commonly known as the deal sheet of Vitagraph and I ask you whether looking at this it will now refresh your recollection that that product that you bought for 1937-1938 season was features and not shorts?

A. This was not any contract. This is a memorandum.

Mr. Wright: That is a deal sheet.

The Witness: It says, "Did not sell".

By Mr. Rogers:

Q. That is the previous season?

A. I think that is correct. I think that is the first Warner's we played.

Q. That was really features, wasn't it?

A. That is right.

Mr. Rogers: I will mark this for identification.

(Thereupon the deal sheet memorandum referred to was marked as Defendants' Exhibit D-10 for identification.)

Mr. Rogers: I wish to offer for identification letter September 18, 1937, from Vitagraph to E. W. Long.

[fol. 265] (Thereupon the letter referred to dated September 18, 1937, addressed to E. W. Long, was marked as Defendants' Exhibit D-11 for identification.)

Mr. Rogers: I should like to offer both in evidence, Mr. Wright.

Mr. Wright: We have no objection.

(The deal sheet memorandum, previously marked as Defendants' Exhibit D-10 for identification, was received in evidence.)

(The letter dated September 18, 1937, to E. W. Long, previously marked as Defendants' Exhibit D-11, was received in evidence.)

By Mr. Rogers:

Q. Do you remember August 11th, 1939, a salesman by the name of Catlin calling on you on behalf of Warner's—Vitagraph to work out a deal for you for Warner's product for the reason 1939-1940?

A. I remember Mr. Catlin, yes.

Q. And working out a deal with him in August, 1939 for the 1939-1940 product?

A. I don't remember whether we made a deal or not.

The Court: The question was whether he called on you for the purpose of making the deal.

The Witness: He might have called. He called on me out [fol. 266] there quite frequently.

Q. Do you recall making a deal with him in August, 1939, and spending most of the day in working out the deal?

A. I don't remember anything about it.

Q. Do you remember in connection with making that deal you requested them and they consented to cancel most of the 1938-1939 short subjects that you were obligated to pay and play and pay? Remember that?

A. I can't remember any of the details of it, no, it is too far back, too long ago.

Q. Do you remember in 1939, going into double features at the Memorial Theater?

A. We played some double features in 1939.

Q. Don't you remember telling Catlin by reason of playing double features you did not have room any more to play short subjects and asked him to cancel out 1938-1939?

A. We might have substituted some short features in place of short subjects. That's all right, I suppose.

Q. Do you remember him canceling out the short subjects for you?

A. I don't remember. I think we did. I am not sure. I think we made a trade. They were always in and out trading and canceling stuff, putting in new stuff, and it was routine, couldn't keep details and dates in your head, it is too much.

[fol. 267] The Court: Did you continue any shorts after the fall of 1939?

The Witness: Yes, I think so. We continued some shorts, always ran shorts between features, double features required less shorts.

Q. You do recall this, don't you?

A. Yes.

Mr. Wright: We tried to limit our testimony to feature pictures. I don't see what significance of what is done with reference to short subjects has in any event; news reels and shorts and travelogues, serials, all the rest of it. I suppose we could spend a great deal of time here, but it wouldn't have much to do with the issues of the complaint. The complaint is limited to feature pictures.

The Court: This question is directed to the exchange of shorts for features.

Mr. Wright: Talking about cancellation of short subjects and the use of short subjects.

The Court: Assuming he got features, wouldn't that be important?

Mr. Wright: As to the features, I would assume that is significant, but I understood what he was asking him about was how many shorts he used and what he did with respect [fol. 268] to the cancellation of short subjects.

The Court: Suppose he cancelled shorts for features? Wouldn't that be material?

Mr. Wright: What would be the significance?

The Court: On the hearing it might have prevented him from obtaining the features.

Mr. Wright: How would that contradict it?

The Court: To show the way he gets features. Your claim is he couldn't get features.

Mr. Wright: I claim it is not significant whether he got features by cancelling shorts or some other way. I suppose the important thing is that he got features.

Mr. Rogers: I believe it is material.

The Court: Go ahead, Mr. Rogers.

Mr. Rogers: I want to make one point clear, your Honor, and that is this: If these distributors conspired with the Schines to drive this man out of business, or keep the product away from him, and they had him bound to a contract for these shorts, they would have held him to the contract. They wouldn't let him out and swap horses and get additional features.

[fol. 269] Mr. Wright: He didn't claim he could get Warner pictures at all. There was no such claim as to Warner's. He is simply setting up a straw man and knocking him down.

By Mr. Rogers:

Q. Now, do you recall as one of the conditions you made for getting the 1939-1940 Warner's product for the Memorial Theater you requested that you get the top twenty features, and that they were to be played on percentage and on preferred time? Do you remember that?

A. I think that is all right.

Q. You think that is right?

A. I think that is all right.

The Court: What company was that?

Mr. Rogers: Warner's.

The Witness: That was all for second-run stuff.

Mr. Rogers:

Q. I believe I said second-run, Mr. Long.

A. All second-run.

Q. Yes, I believe I said that.

A. Yes.

Q. Do you remember this man Catlin calling on you on January 10th, 1940, and discussing selling second-run feature product to you?

A. He might have.

[fol. 270] Q. Do you remember making a deal for 17 features at that time?

A. No, I don't remember distinctly anything of that kind, making any deal at that date. I might have. I had the contract. I could check up on that but I wouldn't be definite.

Q. Do you remember you and he discussing Westerns, these Western features?

A. Warner Brothers' Westerns?

Q. Yes.

A. Never heard of them.

Q. You never have?

A. Didn't know they made any.

Q. Do you remember telling him you had more Westerns than you knew what to do with?

A. I might have.

Q. You wouldn't buy any more?

A. I might have. I didn't know Warner's had Westerns. Who are the stars in them?

Mr. Rogers: Well, we will go into that some other time.

Q. Do you remember Catlin calling you August 7th, 1940, with reference to trying to sell you featured product for the Memorial Theater at Mt. Vernon?

A. I can't recall anything definite in regard to his call.

Q. Remember him at that time discussing the 1940-1941 [fol. 271] season product, the second-run for you?

A. He might have.

Q. Do you remember at that time your saying to him that you hadn't bought an inch of film and you didn't intend to buy for a long time yet?

The Court: Hadn't bought what?

Mr. Rogers: Hadn't bought an inch of film and didn't intend to buy any for a long time yet?

The Witness: That was just a few months before we closed down.

Q. I mean do you remember having said that to him?

A. I don't remember, no.

The Court:

Q. In September didn't you expect to continue the lease the next year?

A. I didn't, no. We weren't getting very much product except second-run.

The Court: You said your lease expired in September, 1940. You expected at that time to get a lease for next year under your option agreement?

The Witness: Why, yes, we expected at that time, yes, that is right?

The Court: But what you actually done—your answer to counsel a minute ago was you did not want any more be-
[fol. 272] cause your lease was about to expire?

The Witness: I think that was premature. I think that was a year later.

The Court: 1940 was the first year of the second lease?

The Witness: Yes, that is right. I was figuring a year later. That is all right.

Mr. Boggess: Just to keep the record straight, your Honor, it was the only year.

The Court: What?

Mr. Boggess: It was a one-year lease.

The Court: Yes. In September he told him, or he expected to close the deal some time back. I asked him whether in September, if in September, he expected to continue the lease on the second option.

Mr. Rogers: And I believe that letter which he calls the acceptance of the option was signed right about that same time.

The Court: We are speaking about the fall of 1940.

Mr. Rogers: 1940. You are quite right, your Honor, because he has the other year in 1941.

Q. Do you remember Mr. Catlin calling on you on October 14th, 1940 to work out a deal with you for second-run for the 1940-1941 product of Warner's?

A. I don't recall it.

[fol. 273] Q. Well, do you remember him at that time waiting around quite a long time and finally you and your son and he sat down? Do you recall that?

A. No, I don't recall it.

Q. Don't you recall it at all?

Mr. Rogers: Your witness, Mr. Boggess.

Redirect examination.

By Mr. Boggess:

Q. Mr. Long, what was the population of Cadiz in 1935?

A. About 2700 people.

Q. Mr. Rogers mentioned the Memorial double-feature. Can you tell us anything in regard to whether the Schine Theater double-feature began back about 1935?

A. They began double-featuring about that time, 1935 or 1936.

Q. Which Schine Theaters double-featured?

A. The Vine and also the Lyric.

Q. The Vine and the Lyric?

A. Yes, sir.

Q. Did they double-feature in 1936?

A. I think the Vine did once a week in 1936.

Q. How about the Lyric?

A. I don't remember. They might have on Saturday nights. I think they did some on Saturday nights, West-
[fol. 274] erns and other short subjects.

Q. I believe you tesified the Lyric continued to run every day until the summer of 1936 and went on a two-day basis after that?

A. Yes.

Q. Was that on a double-featuring basis for those two days or not?

A. I think it was part of the time. Part of the time it was double-features.

Q. How about the year 1937 up to the time that the Lyric was torn down, the Vine and the Lyric, did they double-feature in that period?

A. Both of them ran double-features, yes.

Q. Mr. Long, with reference to the United Artists, after you lost their first-run products, did you secure some second-runs from them?

A. We did.

Q. Mr. Long, do you know who had charge of the Schine Theaters in Mt. Vernon in the period in which you were engaged in business there?

A. Well, Mr. Lazarus seemed to be the active field Manager there and Mr. May had charge of the real estate, and he was around there when they were building the theater.

Q. Who had charge of the Vine and the Lyric Theaters?

A. You mean the manager?

[fol. 275] Q. Yes, sir, in charge of those theaters?

A. Mr. James Platt.

Q. Was he the manager of both the Vine and the Lyric?

A. He was.

Q. Was he the manager of the Vernon?
A. Yes. He is still manager of the Vernon.

Mr. Boggess: That is all.
Mr. Rogers: That is all.
Mr. Wright: I was going to suggest while at this time we have Mr. Long still on the stand, we identify the inter-office material that we were going to inspect with reference to this particular situation, and I will ask to have this letter from Mr. Bissell, the Columbia manager at Cleveland, to Mr. Jackter, Columbia Sales Manager, dated February 26th, 1935, marked Plaintiff's Exhibit P-10 for identification.

(Thereupon the letter dated February 26, 1935, was marked as Plaintiff's Exhibit P-10 for identification.)

Mr. Wright: I will ask to have marked as Exhibit P-11 for identification, the preceding letter, February 21st, 1935, [fol. 276] from Mr. McConville to Mr. Bissell.

(Thereupon the letter dated February 21st, 1935, referred to, was marked as Plaintiff's Exhibit P-11 for identification.)

Mr. Wright: I also ask to have marked as Exhibit P-12 for identification a letter from A. M. Goodman, the United Artists Branch Manager, at Cleveland, to Paul M. Lazarus at the home office.

(Thereupon the letter from A. M. Goodman, United Artists Branch Manager at Cleveland, Ohio, to Paul M. Lazarus, referred to was marked as Plaintiff's Exhibit P-12 for identification.)

Mr. Wright: I also ask to have marked as Plaintiff's Exhibit P-13 for identification, a letter dated April 7th, 1938, from Mr. Tyree Dillard, Jr., at the Metro-Goldwyn-Mayer, to F. D. Drew, the Branch Manager at Cleveland.

(Thereupon letter dated April 7th, 1938, referred to, from Mr. Tyree Dillard, Jr. to the Metro-Goldwyn-Mayer to F. D. Drew, was marked as Plaintiff's Exhibit P-13 for identification.)

Mr. Wright: I understand these contracts that Para- [fol. 277] mount was to produce, that Mr. Boggess referred to, are now here and we will also ask to have those marked for identification as Plaintiff's Exhibit P-14. That will be

the contract between Schine Enterprises Corporation and the Paramount Pictures for the exhibition of the group S-10 features in the Vernon or Vine Theaters at Mt. Vernon, Ohio, dated September 22nd, 1938, simply the second-run contract of that date.

(Thereupon the contract referred to was marked as Plaintiff's Exhibit P-14 for identification.)

Mr. Wright: And the second-run contract for the next season, between the same parties for the same theaters, I will ask to have marked as Plaintiff's Exhibit P-15.

(Thereupon the contract dated September 30th, 1940, referred to, was marked as Plaintiff's Exhibit P-15 for identification.)

Mr. Wright: This Plaintiff's Exhibit 1, which I believe was offered for identification we will now offer in evidence. That is the first-run contract with Columbia that [fol. 278] was dated February 28th, 1935.

Mr. McKay: The contract between Columbia and Long?

Mr. Wright: That is right.

Mr. McKay: I would like to call your Honor's attention to the statement appearing on the contract in relation to clearance, "First-run. The usual clearance as set up by Zoning Board."

The Court: What do you mean by the usual clearance set up by zoning?

Mr. McKay: I think that will have to be developed in the course of the trial.

Mr. Wright: We don't offer it for any purpose that has anything to do with the clearance notation there. All we offer it for is to show he did not get his first-run Columbia pictures until some two months after he applied for it. We also show this exchange of correspondence, letters identified as Plaintiff's Exhibits P-10 and P-11, as explaining the reason why he didn't get it for two months afterwards, and it appears from these letters——

Mr. McKay: Just a minute, Mr. Wright. We object to reading from any of these exhibits where they are offered only for identification. If they are offered in evidence, we [fol. 279] object to them.

Mr. Wright: I suppose the Court wants to know what the purpose of the offer is and where they fit into the case. We

can't very well explain that without referring to the contents.

The Court: Are you offering them now?

Mr. Wright: Yes.

The Court: They are marked only for identification.

Mr. Wright: I offer this Exhibit P-10 and P-11. I gave you copies of them.

Mr. Rogers: May I look at them for a moment?

With reference to Exhibit P-11 for identification I very seriously object to the introduction of that letter into evidence on the ground that it is a letter written by one employee of Columbia Pictures to another employee of Columbia. Surely, anything that one of these officials writes to another cannot possibly be binding on these defendants. I can readily assume that if Columbia was still a party to this action, or a party defendant, it would be a different situation, possibly.

The Court: That makes no difference whether they are parties or not. The question is whether they are party [fol. 280] conspirators.

Mr. Rogers: But even then the declaration of one official of the corporation to another official of the corporation is not binding on the Defendants.

The Court: I don't think there is sufficient foundation laid for it yet. They are marked for identification.

Mr. Wright: If the Court please, I think it is a little hard to pass on that without knowing what the contents of the letters are. It relates to this particular contract which has been offered.

The Court: It reverts to the authority of these men. I don't know.

Mr. Wright: These documents were produced from the files of Columbia Pictures Corporation in response to a subpoena. They are business memorandum that were kept and preserved as part of the records of Columbia Pictures Corporation showing what was done with respect to this particular contract that was made with Mr. Long in Mt. Vernon. That exchange of letters is obviously the best possible evidence as to what the motivation was for holding [fol. 281] the making of this particular contract and that is what they are offered to prove. If there is any question of authenticity of these letters that, of course, I would assume that they are always free to make a motion to strike or have the letters removed from the record if it should

appear at some later date that they are not what they purport to be, but on their face, they are communications passing between these executives of the Company in the ordinary course of performing the business that is represented by this contract that was made with Mr. Long and as such they are clearly admissible to show what the course of that business was and why it was done, the way it was done, and that is what they are being offered for.

The Court: I don't know where they come from, only your statement.

Mr. Wright: I take it there is no dispute as to the facts. We have Mr. Rolls, I think was their representative of Columbia. There isn't any dispute about the fact if these letters were taken from the Columbia files and represent [fol. 282] part of the Columbia records which were kept in the ordinary course of business, there is no argument about that.

Mr. Rogers: If these were taken from our files, sir, there might be some force to Mr. Wright's contention and if Columbia was party here, and they are taken from their files and records, he has to show authenticity, he has to show the source, he has to show authority.

The Court: It isn't offered to make it presumptive proof of authority. The fact that they are from the files.

Mr. Rogers: Non-defendant. Remember these are not from the files of a defendant. If they were found in the files of a defendant, it would be a different story.

The Court: I don't think it makes any difference in that respect whether they are parties or not. They are parties to a conspiracy. The same proof comes from one category would mean the other.

[fol. 283] Mr. Rogers: I believe there is a clear distinction, may it please the Court. I think the distinction is that where one is not a party then the resort must be had to subpoena if the party is available to subpoena. However, the corporation is a party to the litigation, and when it is found in the custody of one who is a party to the litigation then there is a presumption arises. That party on the direction of the Court can be compelled to bring it into court, but you could not compel an outsider merely on your direction to bring the files into the court. You would have to do it on subpoena. On the question of conspiracy may I direct your Honor's attention to the Circuit Court of Appeals, Second Circuit, in the case of the United States vs. Peoni,

where that very contention that Mr. Wright is using here has been exploded (reading from opinion).

In that case for using testimony of that kind the conviction was reversed.

The Court: That is not parallel to what we have here. In a conspiracy you ordinarily do not establish it by a single [fol. 284] witness. It has to be developed. I think the Government would be in a position here to make better proof on a showing by a representative of the company here, the individuals who wrote these letters, their position with the company.

Mr. Rogers: But before letters of that kind are received it seems to me we ought to get some qualifying evidence here, some evidence making them competent, some evidence to show who these men are and what their authority is, particularly when we are dealing with intramural communications of this kind within the body of the corporation itself.

The Court: Why cannot that proof be made, Mr. Wright?

Mr. Wright: If the Court please, I do not see that it makes a great deal of difference whether or not your Honor actually admits these in evidence at this time or merely reserves a ruling on them. The important thing, as I see it, is to show while the witness is still here what we propose to establish with this inter-office correspondence. Before, as I say, we attempted to stipulate in advance who all of these men were. I do not think there is any question about [fol. 285] that being eventually proven. Of course if we do not prove it this can all be stricken out at any time.

The Court: I do not think it is the proper procedure at this time because you may want to examine somebody on the stand with reference to these matters.

Mr. Rogers: Actually as to motivation and the surrounding circumstances. Otherwise we do not get the benefit of the witness on the witness stand.

The Court: I will receive the exhibits subject to being stricken out.

Mr. Rogers: That is also subject to the same reservation that was made before?

The Court: Yes.

Mr. Wright: Exhibit P-10 is the letter from Mr. Bissell, the Columbia Branch Manager at Cleveland, to Mr. Rube Jackter, the Columbia Sales Manager at New York, and the date is February 26, 1935. That accompanied this contract that is identified here as Plaintiff's Exhibit 1, which was

approved on February 28th, and the application is dated [fol. 286] February 25. This letter says: "My dear Rube" (reading letter).

Exhibit P-11 is a letter from McConville to Bissell that is referred to in Exhibit P-10. This is dated February 21, 1935, and reads (reading letter).

Mr. Rogers: May it please the Court, of course these letters cannot be accepted as establishing factually what is contained in these letters. That should be established by the plaintiff by competent evidence, and that is exactly why I objected to the admission of these letters.

Mr. Wright: Of course they are not offered for that purpose.

Mr. Rogers: If they are offered not for that purpose will you limit the purpose for which you claim they are offered?

Mr. Wright: They are clearly offered to show that Columbia could not and would not deal with this exhibitor until it had been unable to make the deal with the Schine Company and——

The Court: Your letters do not show that, do they?

Mr. Rogers: No.

Mr. Wright: The letter P-10 says very clearly "We can make more money by selling Long here, get more money out of Long than they would get out of Schine", but Bissell's [fol. 287] letter to Jackter says, "We had to hold the deal up on account of Schine", and what these letters very clearly establish is that they were not able to sell——

The Court: Standing alone they would not show that. I will receive the letters, anyway. If they are competent for any purpose they are competent to be received.

Mr. Rogers: May it please the Court, Mr. Wright has limited his proof and his offer of proof under these letters, yet the offer is not embraced at all in the language of the letters. He is offering the two letters P-10 and P-11 merely to show that Columbia endeavored to hold up Long pending a deal with Schine, waiting to see whether or not they could make a deal with Schine. On the contrary, these letters do not show anything of the kind.

The Court: I may be with you so far, but that does not prevent you showing further that they held up Schine. I will receive them.

Mr. Rogers: On the other hand, the letters do not show any reason for a hold-up. The contract is dated February

[fol. 288] 25 and the approval is February 28, three days later. I say for any purpose these letters are not admissible and surely not for the factual matters there contained.

The Court: I will receive them at this time.

(Thereupon the letter dated February 26, 1935, was marked in evidence as Plaintiff's Exhibit P-10.)

(Thereupon the letter dated February 21, 1935, referred to, was received in evidence and marked as Plaintiff's Exhibit P-11.)

Mr. Wright: P-12 is a letter from the United Artists Branch Manager at Cleveland, A. M. Goodman, to Paul M. Lazarus at the home office in New York. This is dated February 8, 1937, and reads (reading letter).

I want to offer this in evidence, this letter of February 8, 1937, Exhibit P-12 for identification.

The Court: Purporting to be a letter from whom to whom?

Mr. Wright: This is from Mr. A. M. Goodman of the United Artists, Branch Manager at Cleveland, to Mr. Paul M. Lazarus at the home office in New York, and it relates to a deal made with Mr. Long, about which he testified. [fol. 289] The Court: I take it from what you said before that you are going to introduce evidence here to show more about these letters? The ordinary way would be to prove them by somebody from the Company.

Mr. Wright: Mr. Goodman has already been identified as the Branch Manager and Mr. Paul M. Lazarus is the Branch Manager in New York, and that proof will appear.

The Court: I will receive it, subject to being stricken out later on.

Mr. Rogers: And subject to the same objection on the part of the defendants as was made to P-10 and P-11?

The Court: Yes.

Mr. Wright: In that connection we should also like to offer data as to the film rental which Mr. Long paid United Artists and those paid by Schine. This data showing play dates and rental paid is contained in an answer to an interrogatory that was submitted to the United Artists Corporation. Instead of offering or tearing apart the interrogatory I would like to read into the record the data we regard as significant, and then if there is any question

[fol. 290] as to the correctness of the data it, of course, may be subject to whatever changes counsel for the defense thinks should be made.

Mr. Rogers: May it please the Court, I think Mr. Wright is just shifting the burden to the wrong shoulders here. It is up to Mr. Wright to prove his case and not up to us to concede his case for him, and to prove his case in a proper manner, and that is by proper, competent evidence. I have not heard in a long time a more flagrant abuse of the right of introduction of evidence than there was read to this Court now in the Exhibit P-12. There is the rankest kind of hearsay that permeates that letter. There is no difficulty at all on the part of Mr. Wright if he wants to prove his case properly and in accordance with the rules of evidence to get the proper evidence into this court. Whatever United Artists, or whatever any non-defendant, stipulated by reason of interrogatories when they were parties has no relationship whatever to us, has no binding force [fol. 291] and effect on us, and cannot be foisted on us in this manner by having Mr. Wright say he will introduce it first, and then the onus is going to be on us to disprove. The onus is just the other way. It is on him to prove and on us to disprove. I have never heard that propounded before, and I hope never to hear it propounded again.

Mr. Wright: On these film rental figures of course we could subpoena the cut-off record of the United Artists from which this tabulation is made, and which I understand will show the same thing. Certainly as to the rental that was paid here, this data has been open for examination by the defendants as well as ourselves. If any one wishes to challenge it we will of course subpoena those records. It does seem to me, however, that it is something of a waste of time, unless there is some dispute about the accuracy of what the United Artists has put in its sworn tabulation. I would regard this as just as satisfactory evidence as the cut-off card from which it was made.

The Court: Do you object to it?

[fol. 292] Mr. Rogers: Indeed, I do.

The Court: Sustained.

Mr. Wright: May I simply state what we wanted to show and what we will show then by production of the cut-off record? What we wanted to show——

Mr. Richardson: Supposing he puts it in evidence on the record and shows it to your Honor in that way instead of inserting it in this way?

Mr. Wright: The only reason for my stating it is to give them the opportunity, if they wish to do so, to examine Mr. Long about it. If they do not want that opportunity then that is immaterial to me.

The Court: Anything further?

Mr. Wright: Counsel offered in evidence this letter from the Cleveland Exchange Manager for Metro, dated April 12, 1938, in which he offers some of the 1937-1938 pictures. You will recall that Mr. Long had previously been advised by Metro that the 1937-1938 product had been sold to Schine. Then they came back and offered him a split deal and he got half of the 1937-1938 pictures. This letter of [fol. 293] April 12, 1938, I take it, was offered by the defendant to show that the 1937-1938 product had not actually been sold to Schine. That, as we understand it, was an untruth, and we offer this——

Mr. Rogers: That was not the purpose of offering D-6, and I do not want to be misquoted or misunderstood. The purpose of offering D-6 shows clearly on the face of it that it was offered for the purpose of showing that Long admitted that he had an abundance of pictures available at the time that letter was written, an abundance of pictures. Not as to whether any deal had been closed at any particular time at all. That was read to him. In other words, I read it to him and I said, "You remember receiving it?" And he said, "Yes." I directed his attention to this one paragraph which read, "I appreciate all you told me in conference of having an abundance of pictures available for you at this time and being booked up to July 1st, still having six of our pictures to play." That is all I directed his attention to and he admitted that.

Mr. Wright: As I understood it the entire letter was [fol. 294] offered in evidence. Am I mistaken about it?

Mr. Rogers: I think you are mistaken.

Mr. Wright: In any event, the statement is read there and I want to offer in evidence this Exhibit P-13, which is a letter dated April 7, 1938, five days before, from Mr. Dillard to Mr. Drew, and which explains, I think, why Mr. Drew then attempted to make it appear in this letter of April 12th that he had not sold the 1937-1938 product, sec-

ond run, to Schine, but actually some of it was still available.

Mr. Caskey: These documents that are being produced here, the photostats, are in lieu of their production under a subpoena duces tecum?

Mr. Wright: They were subpoenaed.

Mr. Caskey: You are simply producing them rather than having a witness on the stand to identify them?

The Court: We are putting the cart before the horse. I have admitted these on the ground that they will be identified, and they will be stricken out unless it is shown from the record that they are what they claim they are.

Mr. Caskey: I want to call attention to the fact that Mr. Dillard is an attorney for the Company, and if we were [fol. 295] following the normal procedure and there was a witness on the stand called to produce this letter the privilege would be claimed.

The Court: You will have to show the fact that this is part of the letters of the Company.

Mr. Wright: Mr. Caskey has just so stated. There isn't and question about that. This came from the files of the Company.

The Court: If they consent to it that is another thing.

Mr. Wright: I mean that they don't dispute——

The Court: I do not know what they dispute. They dispute it when they raise an objection to it.

Mr. Rogers: Exactly. And I raise the same objection to this as I did to the others, and on the further ground that now the accredited representative of this defendant claims privilege.

The Court: As long as you have got the parties right here with the original documents who can testify to these things, that is the simplest way to do it.

Mr. Wright: The only party who is here is Mr. Caskey, who is the one who is in charge of the documents that were produced by this Company in response to the subpoena. If [fol. 296] there is any question about the fact that these came from the Company's records I would be glad to put Mr. Caskey on the stand and show it.

Mr. Caskey: We are claiming the privilege.

Mr. Richardson: Why don't you call the witnesses? Is there any reason why not?

Mr. Wright: We have, of course, a great many of these documents, or a substantial number, which relate to many different situations. In no event, it seems to me, would there be any purpose served in calling one or more of these people here, interrupting this examination with their testimony, sending them back, and putting on a witness in another situation, and then calling him again from the Company and identifying something else.

The Court: One individual from any one of these companies can identify the records of the Company, can they not?

Mr. Wright: That, I take it, Mr. Caskey can do. He is the designated representative. I will call him as a witness.

Mr. Rogers: May it be understood, your Honor, that Mr. Long has not been excused?

The Court: My point about it is that the orderly way [fol. 297] would be for one representative of the Company to identify the records that you have here that you propose to introduce as being a part of the records of the Company.

Mr. Wright: As a matter of convenience they delegated that task to Mr. Caskey. That I think I can show if he will take the witness stand.

John F. Caskey, a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Mr. Caskey, you are familiar, are you not, with the subpoenaes which have been served in this case for the production of documents on Loew's, Inc., R.K.O., Radio Pictures, Paramount Pictures, Inc., 20th Century-Fox Film Corporation and Warner Bros. Pictures; is that right?

A. I am as to the first four.

Q. In any event, the first four includes Loew's, Inc.?

A. Yes, sir.

Q. And this document that has been marked here for identification as Exhibit P-13 is one of the documents that was produced by Loew's, Inc., in response to the subpoena?

[fol. 298] A. That is correct.

Q. And that was taken from the files of the Loew Company?

A. The original from which this photograph was made was delivered to a representative of the Department of Justice, who caused this photostat to be made, and the original returned to the Company.

Q. You have been designated by Loew's, Inc., and the other four distributors, to produce here at the trial the documents which the Government has subpoenaed for the trial from the so-called Big Five?

A. I don't know anything about the so-called Big Five. My clients have authorized me to produce the papers which come within the subpoena.

Q. And your clients include Loew's, Inc.?

A. Yes, sir.

Mr. Wright: That is all.

The Witness: I would like to state on the record that Mr. Tyree Dillard is an attorney at law and was counsel for Loew's, Inc., at the date which this document bears.

Mr. McKay: Your Honor, if Mr. Wright is going to make an offer of this document I think he should make it while Mr. Caskey is on the stand so that he can assert his privilege. Obviously Mr. Wright is waiting until he gets [fol. 299] Mr. Caskey off the stand before he makes the offer.

The Court: We still do not know where he got these papers. They are not identified as coming from the records of the Company.

Mr. Wright: I asked him if this came from the files of Loew's, Inc., and he said it did.

The Court: Do you personally know that?

The Witness: I am entirely satisfied of that.

The Court: Do you know where they came from? You told how you got them awhile ago. Do you know where they came from?

The Witness: They were given to me by the General Counsel of Loew's, Inc., as the papers which complied with the subpoena duces tecum.

Mr. McKay: I understand this paper is not covered by the subpoena from Mr. Caskey's associate counsel. I raise the question

The Court: Anything further?

Mr. Wright: No.

Cross-examination.

By Mr. Rogers:

Q. May I ask, Mr. Caskey, after having made your statement of Mr. Dillard's position with Loew's and M.G.M., is [fol. 300] it your position that Loew's and M.G.M., your clients, claim privilege with reference to any communications as between Mr. Dillard and anybody in connection with the Company?

A. Loew's, Inc., claims this document is a confidential communication between its Counsel and itself and claims the privilege.

The Court: I think it would be very easy to prove without taking up the time here in discussions relative to the introduction of these papers, by producing here somebody that knew where these records came from and that they were part of the records of the Company. That is all you would have to do. This attorney gets them from another attorney. Whether they came from the records of the Company there is no proof of.

Mr. Wright: Mr. Caskey's function in coming was to save the necessity of calling these people from Loew's, Inc.

The Court: What do you offer now?

Mr. Wright: I am offering this letter which has been marked as Exhibit P-13 for identification.

The Court: I will receive it but I am going to strike it out unless it is further connected up.

[fol. 301] Mr. Rogers: And subject to my objection?

The Court: Yes. It is only a photographic copy, is it not?

Mr. Wright: Yes. I take it there is no objection from the fact that it is a photostat? Is that correct?

Mr. Rogers: That is correct.

The Court: What exhibit is that?

Mr. Wright: That is P-13. The date is April 7, 1938. It is a letter from Mr. Tyree Dillard, Jr., at the home office of the Loew Company, to the Cleveland Branch Manager, F. D. Drew. It reads (reading letter).

Mr. McKay: Is that letter offered to show that the second run licensee was in fact changed?

Mr. Wright: Yes, it is.

Mr. McKay: Then it is certainly objectionable on that ground, your Honor. It cannot be offered as proof of the

facts stated in the letter, depriving us of our right of cross examination either of Mr. Drew or Mr. Dillard.

The Court: The theory on which it would be admitted without the production of the individual writer would be that it appears as part of the records of the company, that they were taken from the records of the company.

Mr. McKay: It is hearsay as it now appears.

[fol. 302] The Court: I said unless it is connected up as being part of the records of the company it will be excluded.

Mr. Rogers: Your Honor, may I make this suggestion? It seems to me that a certain amount of elasticity may be in order at times, but here we have gone through the testimony of an entire witness, we have got his oral testimony, we have got documentation here, and we haven't a single scintilla of evidence by the plaintiff as to who these people are that wrote these letters, who these people are that are supposed to have made these statements. It seems to me that the plaintiff owes to this Court a more careful degree of preparation than that in the trial of a case. I think they might have devoted a day or devoted two days before bringing the witnesses on to having some accredited representatives of these producers appear and place these documents before the Court, and have these persons identified and have their authority identified, so that we would know just how far these people are authorized to act and what they [fol. 303] are doing here. We have got a tremendous mass of unconnected documents, unconnected testimony, all hanging by a slender thread. When it comes to making motions to strike those motions are going to take a lot of the time of this Court.

The Court: I have already passed on those questions. I presume that perhaps they would have some knowledge of the relationship of some of these parties named in these letters. I do not think an objection should be made from a captious standpoint. My view of the matter is that when the company is charged as a conspirator the records are competent as proof when the records are properly identified as company records. As I pointed out, in my view, several times their relation is the same as though they were a party to the action. There is a charge here that there is a conspiracy and if they are conspirators their records relating to these transactions directed to show a conspiracy, if they are properly identified, are competent. I do not think Counsel should make captious objections if

[fol. 304] there is no disagreement about the position that these gentlemen held. On the other hand, Counsel has the right to object and hold the plaintiff to its proof, and that is the proof by an officer of the company who knows that these are a part of the records of that company. It is the simplest thing in the world for an office man or a general manager to come here and testify that these are records taken from that office.

Mr. Rogers: But the graver part is this tremendous mass of factual matter contained in these letters which I think we are entitled to have evidence on.

The Court: The Court will direct him to be here at any time you want them to examine on these letters.

Mr. Rogers: It is more than merely directing him to be here to examine him on these letters. I think it is rather if the plaintiff is introducing these letters as evidence of the factual matter contained in these letters then we are entitled to have the evidence of witnesses as to these factual matters and not merely a declaration in a letter.

[fol. 305] The Court: I disagree with you on that. As I said before, if they are letters shown to have been kept in the regular course of business by one of these companies, and then they are identified as being part of that record, they are competent here. I mean by that you have not got to call one of these gentlemen here to testify that he wrote this letter and so-and-so received it. It is received because they are a part of the records.

Mr. Rogers: I will go as far as that, your Honor, but I do not go the rest of the way. That is where this writer of the letter attempts to set forth factually a state of facts which your Honor is going to take as testimony of the fact I think we ought to get evidence on those factual matters and we are entitled to evidence on those factual matters and to cross examination.

The Court: The question of connection, of course, is to be raised at the end of the trial.

Mr. Rogers: And that is their duty in spelling out their case. He must get the witness on the stand and prove his facts by the witness.

The Court: No, I do not agree with that statement.

[fol. 306] Mr. Wright: The last two documents that were identified were the contracts for second run between Paramount and Schine for Mt. Vernon, which are respectively

marked P-14 and P-15 for identification, and we will offer those.

(Thereupon the contract previously marked as Plaintiff's Exhibit P-14 for identification was received in evidence.)

(Thereupon the contract previously marked as Plaintiff's Exhibit P-15 for identification was received in evidence.)

Mr. Rogers: There is no objection to the documents, but I do not think we will take the characterization of Mr. Wright as part of the document or his implications.

FREDERICK LOREY, a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Boggess:

Q. Mr. Lorey, where is your residence and what is your occupation?

[fol. 307] A. Mt. Vernon, Ohio, and I am City Editor of the Mt. Vernon News, a daily newspaper.

Q. How long have you been City Editor of the Mt. Vernon News?

A. About 15 years.

Q. Mr. Lorey, have you with you the edition of your paper of date July 13, 1939?

A. I have.

Q. Are you acquainted with Mr. James Platt of Mt. Vernon?

A. Yes.

Q. What is his connection with the Schine Company?

A. I understand he is the local manager of their theatres in Mt. Vernon.

Q. Will you turn to the issue of July 13, 1939, and find an article which is signed by Mr. Platt, relative to the lease on the Memorial Theatre?

A. Yes, it is on page 7 of that issue of the paper, under the heading of "People's Forum". It is a letter to the Editor of the News.

Mr. Boggess: Your Honor, this is an article signed by James C. Platt——

The Court: Are you offering it?

Mr. Boggess: I am offering it in evidence, yes.

Mr. Rogers: May it please the Court, I object to it on the ground that it is not the best or primary evidence, that it purports to be evidence of something that was sent to [fol. 308] the Editor. I object to it on the ground that there has no proper foundation been laid to show the authority of the one who purported to sign it.

The Court: Sustained.

(Thereupon the letter previously marked as Plaintiff's Exhibit P-13 for identification was received in evidence.)

[fol. 309] Mr. Boggess: The Witness, your Honor, has stated that Mr. Platt was the manager——

The Court: Newspaper articles are only hearsay, as far as that is concerned.

Mr. Boggess: That is an article signed by Mr. Platt.

The Court: He did not sign that paper?

Mr. Boggess: No, sir.

By Mr. Boggess:

Q. Mr. Lorey, did this article come up and reach you in the due course of the operation of your business?

Mr. Rogers: I object to that as immaterial.

The Court: Well, let me see. Were you connected with the paper at that time?

The Witness: Yes, sir.

The Court: Did you see the article that was written signed, as in the print?

The Witness: Yes, sir, I saw the letter.

The Court: Did you read it?

The Witness: I read it, yes.

The Court: What became of that letter?

The Witness: It was destroyed.

The Court: Are you able to state whether this print is an exact copy of the letter?

The Witness: Barring typographical errors, it is a true copy.

[fol. 310] The Court: Typographical errors——

The Witness: Might have been a misspelled word, or misplaced punctuation mark, something of that kind.

The Court: I think that makes it competent.
Mr. Rogers: May I interrogate?
The Court: Yes, surely.

By Mr. Rogers:

Q. You say you are the editor of the paper?
A. City Editor.
Q. City Editor. You say the original letter came to you?
A. It came into our office.
Q. Did it come to you personally?
A. I handled it and put it in the copy box.
Q. By that you mean you put it in your copy box to go down to the printing end of your paper?
A. Yes.
Q. And did you compare this article with the original letter?
A. After it was published?
Q. Yes.
A. No, that is not my capacity to do that.

Mr. Rogers: I contend, may it please the Court, that is not admissible.
[fol. 311] The Court: Do you know who wrote that letter?
The Witness: Yes.
The Court: How do you know?
The Witness: Perhaps I shouldn't have said "Yes" so positively. May I state my best recollection?
The Court: You saw it first in the office?
The Witness: Yes.
The Court: Objection sustained.
Mr. Boggess: May I ask him a question or two, your Honor?
The Court: Yes.

By Mr. Boggess:

Q. Was the letter signed by James C. Platt?

Mr. Rogers: I object to that.
The Court: Sustained. Signed with the name James C. Platt. Do you know who signed it?
The Witness: I didn't see it signed, no, sir. I saw the signature "James C. Platt" on the letter.
Mr. Boggess: Does your Honor require that he know his signature in a case of that sort?

Mr. Rogers: I should think so.

The Court: There is an objection to the question.

Mr. Boggess:

Q. You saw the signature, did you not, Mr. Platt's signature?

A. No, sir, I am not familiar with his signature.

[fol. 312] Q. Who brought the article to the paper?

A. I was going to say my recollection is that Mr. Platt gave it to Mr. Devalan and it eventually reached my desk and I sent it out to the composing room. Those letters are sometimes handled by Mr. Devalan himself, sometimes by me, sometimes he gives them to me.

Mr. Boggess: We offer the letter in evidence, your Honor.

Mr. Rogers: Same objection, may it please the Court.

The Court: You mean you saw it delivered to Mr. Devalan?

The Witness: That is my recollection.

The Court: What?

The Witness: That is my recollection. I could be mistaken. This is the first time I thought of it since 1939, and naturally, my mind is rather hazy. I could not state positively.

The Court: Statement to Mr. Devalan and to the City Editor by Mr. Platt are incompetent. Have you any recollection on the subject of Platt delivering this letter?

The Witness: I have been trying to recall the circumstances ever since Mr. Boggess asked me to come up here and I do have a recollection that Mr. Platt came in the office and gave the letter to Mr. Devalan. As I say, I would hesitate to state that as a fact. My best recollection [fol. 313] is that is as far as I can state.

The Court: What is your objection to it?

Mr. Rogers: The objection is that this witness is not able to state as a fact, first, that he did see the letter delivered by Mr. Platt to Mr. Devalan. Second, this witness testified he did not compare the letter with the published print of that letter.

The Court: He said it is the same except for typographical errors.

Mr. Rogers: Sir, that is just his opinion. When I asked him definitely whether he compared it, he said, no, he did not compare it.

The Court: He testified also it was identical except for typographical errors.

Mr. Rogers: That was his statement, but when he was pinned down——

The Court: What is your recollection as to that?

The Witness: Your Honor, as I say——

The Court: Have you any recollection of it at all?

The Witness: I have a recollection, yes.

The Court: What is your best recollection of it?

The Witness: My best recollection is that Mr. Platt came in the office and handed it to Mr. Devalan, and Mr. Devalan, [fol. 314] as I recall, it must have been around lunch time, he was busy, and he turned it over to me and I sent it on up to the composing room, to be set up in type.

The Court: I think that makes it competent.

Mr. Rogers: Wait a moment. May it please the Court, are you able to testify definitely as a fact that that occurred?

The Witness: No, I am not. I said it was my best recollection.

By Mr. Rogers:

Q. And you may be mistaken about that recollection, is that right?

A. I may be mistaken. As I said, it is the first time since 1939 I thought about it.

Mr. Rogers: It seems to me on proof of this kind that there must be definite proof.

The Court: Overruled.

Mr. Boggess: Your Honor, I would like to read this into the record. This is a large book.

The Court: I suppose the article under the date is sufficient?

Mr. Boggess: The article is on page 7 of the Mt. Vernon News of the date Thursday, July 13th, 1939, under [fol. 315] heading "People's Forum.—

Editor of the News:

The Memorial Building was built by the people of Knox County as a memorial to the soldiers, sailors and pioneers of the county. A fine theater was erected in connection with the building for the use of the community for public meetings. If our bid of $3,750. is accepted by the Memorial Building Commission, the theater will be turned back to the County Commissioners for its original

use. The theater will earn $750 more for the taxpayers, and the savings in coal, wear and tear on the building and taxes will probably amount to another $500.

If the low bid of $3,000 is accepted it means that the County Commissioners will be paying more than $1,000 a year for the maintenance of a picture house in their county building.

If any one thinks the offer of $3,750 is made with any selfish motive, I call to their attention that the maker of the bid promoting the largest public building ever erected [fol. 316] in Knox County employs 18 people who spend their money in the county and has given $800 to bring new industries to Mt. Vernon.

If the leasing of the Memorial Theater had ever produced a quarter as much for the community, I would be the first one to say, 'Continue the theater'." Signed "James C. Platt, Manager of the Vernon Theater."

The Court: What do you claim as the significance of that?

Mr. Boggess: The significance of that is that they state where they are putting in a bid of $3,750 for the theater. They say that they will close the theater and they will not operate a show there, but when they get it, they will close it up. In other words, their object in doing that is to eliminate the competition of Mr. Long, close the show and it is not in order to operate another show.

The Court: All right. Is that all of this witness?

Mr. Boggess: That is all.

The Court: Cross-examine.

Mr. Rogers: That is all.

[fol. 317] Lawrence Edmund Sperry a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Boggess:

Q. Mr. Sperry, state your residence and occupation.

A. Mt. Vernon, Ohio, Manager for the United States Employment Service Office.

Q. Mr. Sperry, have you any connection with the Memorial Building, and did you have any connection between the period December 31st, 1934, to the present time?

A. Yes, for about ten years. I have been on the Board of Trustees appointed by the Common Pleas Court operating the building.

Q. When did that connection begin?

A. 1934.

Q. 1934?

A. To my best recollection.

Q. Have you any other official position with the Board of Trustees?

A. I can go by the title Secretary-Treasurer at the present time. Checks go through my hands for the rent.

Q. What is the function of the Board of Trustees with [fol. 318] reference to that building?

A. They prescribe the regulations under which the building will be operated, look after the maintenance and employ the custodian and the help around the building, in the front part of it. Of course, the rear, the theater part, is leased and is under the entire control of the lessee.

Q. Mr. Sperry, you mentioned that you have been connected officially with the building since 1934. At that time who held the lease of the building?

A. The Schine Theater interest had taken over a lease, as I understand, from Mr. Platt, and were paying the rental until the theater closed, up until that lease expired. I came on the picture right at that time when the theater was closed and the thought came before the Board whether they would continue that policy or whether the county, the people, wished it be used for the showing of pictures. That was the question that came up the first year.

Q. When did that lease expire, if you know?

A. The end of 1934, as I remember it.

Q. Who was your next tenant of the theater?

A. Mr. Long.

Q. Mr. Sperry, how long was Mr. Long's lease?

A. It was five years, one year renewal in addition to the five.

[fol. 319] Q. In the year 1939, did a representative for Schine appear before the Board in regard to a lease of the Memorial?

Mr. Rogers: One moment. May it please the Court, may we have that representative defined and named and mentioned, rather than a representative of Schine's which calls for a conclusion?

Mr. Boggess: I am trying to avoid leading my witness.

Mr. Rogers: Let us try to do it the other way, because you were leading your witness.

The Witness: What is the question now?

Mr. Boggess: Do you want me to name who it was?

Mr. Rogers: I want the witness to testify.

The Court: Who was it came before the Board, if anybody?

The Witness: I think there has been several. I think Mr. Platt talked to us and Mr. Devin talked to us, an attorney representing the Schine interests.

Q. When did Mr. Devin appear?

A. I don't know as I can tell you offhand the date.

Q. Was it in the year 1939?

A. Yes, that was my impression.

Q. What was his connection with the defendants' interest?

Mr. Rogers: May we get that date fixed? What time in [fol. 320] 1939?

The Court: Tell with reference to when the new contract was made?

The Witness: I would say probably late in the summer or early fall of 1939, as I remember.

Q. That was when Mr. Devin appeared?

A. Yes.

Q. What was Mr. Devin's connection with the Schine interest?

A. He represented the Schine interests as an attorney, according to his own statement.

Q. He appeared as attorney?

A. That is right.

Q. When he appeared before the Board?

A. That is right.

Q. With reference to the leasing of the theater what statements did Mr. Devin make as to what disposition the Schine interests would make of the theater?

Mr. Rogers. May it please the Court, I object to that on the ground there is no evidence here to show the authority of Mr. Devin, an attorney, to make any statements to bind the Schines, his client.

The Court: Overruled.

Mr. Boggess: Answer the question.

The Witness: Please state the question.

[fol. 321] (Question read.)

The Witness: He followed the line the same as this article that was just read.

The Court: No, no, that won't do.

Mr. Rogers: I move to strike it out.

The Court: What did he say?

The Witness: He was interested that the Schine interests were interested in renting the Memorial Theater and with the idea of the rent paid to the county would be clear, and the theater would be closed, as far as pictures were concerned and would be available for the county to use for any purposes they desired.

Q. You mention that Mr. Platt also appeared before you. What statements did he make?

A. Along the same line. I don't say he made an official appearance. Mr. Platt and I are acquaintances and we see each other quite often.

Q. You mean he did not appear?

A. I don't know. He may have appeared, perhaps he did come in with Mr. Devin at that time.

Q. In talking to you, did Mr. Platt make any statements in regard to the fact that if the Schines acquired the lease of the theater that they would close the theater?

A. That was the impression I obtained from the remarks [fol. 322] of both of these gentlemen who thought it was to the advantage of the county to save the wear and tear on the building, and have the rental to help carry the costs.

Q. What other statement did Mr. Platt make in conversation with you?

A. I don't remember anything in particular.

Q. Did he say anything in regard to the competition of——

Mr. Rogers: May it please the Court, I don't think counsel should be permitted to lead this witness.

The Court: Is that all you recall that was said on the subject of the lease?

The Witness: Yes.

The Court: You may interrogate, if you desire, or draw his attention to any particular.

Q. When Mr. Long's five-year lease expired in 1939, how many bids were put in for the lease for the next term?

A. Let's see, that is the first five-year lease. Mr. Long took advantage of an optional clause that was in the lease and met with us, and we agreed on terms for an additional year. It is my recollection there were no bids received other than his at that time.

Q. What was the object of this article Mr. Platt had in the paper in which he said they had a bid for $3,750?

Mr. Rogers: Pardon me. May it please the Court, that [fol. 323] is asking this witness to give the operation of somebody else's mind.

The Court: It is a conclusion. Sustained.

Q. Then there was no bidding for the lease at the end of Mr. Long's five-year lease?

A. That is my recollection on it now, yes.

Q. Mr. Long simply had an option?

A. He exercised the right, I think the way it is worded in that clause in the contract. We understood between the two of us that he had a right to talk to us first on renewal for another year of that contract, and that is what we did.

Q. To refresh your recollection, Mr. Sperry, didn't Mr. Long's lease of five years, his first lease, didn't it recite, wasn't it for three years with an option for an additional two years?

A. That is right.

Mr. Rogers: May I ask: Do we have the lease here? Instead of all this guesswork.

The Court: That is the testimony of Mr. Long; three years option, to hold it for two years longer.

Mr. Rogers: That is what Mr. Long testified, but we have different testimony from Mr. Sperry that it is five years.

The Witness: I was wrong on that.

[fol. 324] Mr. Rogers: You are.

The Witness: Yes.

Mr. Boggess:

Q. Going back to the end of the five-year lease, can you tell who put in the bids for a new lease after the expiration of the five-year lease?

Mr. Richardson: He already testified no bids were put in.
Mr. Boggess: He was under misapprehension.
Mr. Richardson: No, not on that he was not.

Mr. Boggess:

Q. How about it?

The Court: After the five years expired, then you advertised for new bids?

The Witness: The Schine interests put in a bid and Mr. Long gave us a notice as is required by the contract that he wished to exercise his option.

Mr. Boggess:

Q. This is the end of the five-year lease?

A. That is right. I am mixed up on that. There were several bids. I can't carry the names of the gentlemen who bid at the time.

Q. Did Mr. Long and Mr. Schine bid?

A. Mr. Schine did. He was one of the bidders, and Mr. Long made no definite bid, to my memory.

[fol. 325] Q. Mr. Long secured the lease for the extra year?

A. You said the end of the five years.

Q. At the end of five years there is a lease for an additional year?

A. No.

Q. At the end of 1939, which was the termination of Mr. Long's five-year lease, you said that bids were put in, that Mr. Schine put in a bid. Now, I am asking you if Mr. Long put in a bid, who got the lease for the following year?

A. Mr. Long.

Q. Then Mr. Long put in a bid, didn't he?

A. That is right.

Q. Why was Mr. Schine's bid rejected, Mr. Sperry?

A. We were of the opinion that the community wanted the theater kept open. From a financial figure Mr. Schine's bid was better but in order to do what we thought what the community wanted we accepted Long's bid.

Q. At the conclusion of the one-year lease, which Mr. Long had, there is some testimony in the record in regard to an option. Did Mr. Long give you notice that he would

avail himself of the option of his lease and at what time did he give you the notice, if so, what time?

A. Yes, we received a notice from him. I can't give you [fol. 326] the exact date of it, but it was within the proper time, as I remember it.

Q. Was the notice that you received—is this a copy of the notice that you received?

A. That is my best recollection, yes, it is.

Mr. Rogers: May we have some evidence as to where the original was when that was served on him before we use copies?

Q. Have you the original with you, Mr. Sperry?

A. I may have it. I will see. (A pause.) Is this the one you refer to? (Handing paper to counsel.)

Mr. Boggess: Yes.

The Court: Proceed.

Mr. Boggess: We offer this in evidence.

The Court: Wasn't that received?

Mr. Rogers: It was first received, and then your Honor struck it out.

Mr. Boggess: This is the original.

The Court: All right, received.

(Thereupon, the original letter dated September 30, 1940, from Emerson W. Long to Mr. Sperry, referred to, was received in evidence and marked as Plaintiff's Exhibit P-9.)

Q. Did the Board and Mr. Long have some conferences [fol. 327] about getting together on a new lease?

A. We expected to hear more from him than we did. Finally, we even, I think, sent for him. At the time we put the ad in the paper and we didn't have any activity on his part, to see what he wanted to do about this option.

The Court: He did not appear or come to the Board?

The Witness: No.

Mr. Boggess:

Q. You did have a certain number of conferences, but not as many as you expected, is that what you mean?

A. No, I didn't think he had a definite interest, that we expected, and didn't put a definite bid in at the time.

Q. I am not talking about whether he placed a bid, but

in regard to complying with the terms of the option. The option says there shall be negotiations and come to terms?

A. That is right.

Q. Did you all get together and endeavor to come to terms in regard to a new lease?

A. Rather indefinite I would say.

Q. I refresh your mind in regard to this (handing a paper to the witness).

A. Oh, yes, we had some conversations.

[fols. 328-329] The Court: We will suspend at this time.

(Whereupon at 5:05 o'clock P. M., a recess was taken until Friday morning, June 2nd, 1944, at 10 o'clock a. m.)

[fol. 330] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 223

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al., Defendants

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Friday, June 2, 1944, at 10 o'clock A. M.

Appearances:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Special Assistants to the Attorney General.

Philip Marcus, Esq., and Milton Kallis, Esq., In Behalf of the United States of America.

Edmund McCarthy, Esq., Attorney of Record.

Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

LAWRENCE EDMUND SPERRY resumed the stand on behalf of the Plaintiff, having been first duly sworn, was examined and testified further as follows:

Direct examination (Continued).

By Mr. Boggess:

Q. Mr. Sperry, at the conclusion of the Long lease to whom or to what company did you lease the Memorial Theatre?

A. The Belpik Corporation, a subsidiary, as I understand, of Schine.

Q. Have you the contract of lease with you at this time?

A. I do.

Q. Mr. Sperry, will you look at that and see if that is your signature, as a member of the Board of Trustees (handing paper to witness)?

A. It is.

The Court: What is the materiality of this lease?

Mr. Boggess: We do not intend to introduce but a couple of paragraphs.

The Court: I was wondering what the lease for two years, what that has to do with this case.

Mr. Boggess: This is a five-year lease that followed Mr. Long's lease. It is simply that the Board of Trustees [fol. 332] deemed it advisable to put in the lease a clause requiring the Memorial Theatre to remain open. That was a covenant in the lease, to remain open. And another covenant requiring a certain grade of pictures, and a third covenant that the admission prices should be confined to 25 cents, with a proviso. The materiality is that they recognized that the Schine Circuit might close the theatre, which they did not want to occur; that they recognized that they might raise the admissions, which they did not want to occur.

The Court: Is this a contract of Schine?

Mr. Boggess: This is with Schine.

Mr. Wright: The Belpik is a defendant and a subsidiary of Schine.

Mr, McKay: Our only objection is that it relates to a purely local matter, and we will object to all evidence on that, but we are not going to argue the point at this time.

The Court: Overruled. I will receive it.

Mr. Boggess: I offer this in evidence, may it please the Court.

The Court: Certain paragraphs?

Mr. Boggess: Two paragraphs on page 3, the second and [fol. 333] third paragraphs of a lease dated December 18, 1940, executed by the Board of Trustees of the Knox County Memorial Building and the Belpik Theatre Corporation.

(Thereupon paragraphs two and three of lease dated December 18, 1940, referred to, received in evidence and marked Plaintiff's Exhibit P-16.)

Mr. Boggess: I will now read the two paragraphs (reading.)

[fol. 334] Mr. Boggess (reading from Exhibit 16): "Second Party hereby agrees to operate the leased theater daily and Sunday, giving at least one performance every night, unless Second Party is prohibited from so doing by violence, fire or any circumstance beyond the control of Second Party.

Second Party hereby agreed to operate the leased premises as a medium priced theater of the Class B grade of Theater, showing Grade A Second-run pictures. The maximum price, excluding tax, that may be charged by Second Party for admission to moving picture shows in the Memorial Theater, shall be twenty-five (25¢) cents, unless due to changing economic conditions and inflation and the admission charge for Class B theaters throughout the State be raised, then, and in that event, the admission price herein stipulated may be adjusted proportionately to such increase made in other Class B theaters in the state."

Mr. Rogers: I think there are some additional provisions that ought to be marked as well.

[fol. 335] Mr. Boggess: I also offer in evidence the annual consideration:

"To pay as rent for said leased premises the sum of Four Thousand, $4,000.00) Dollars per year, said rental to be paid in substantially equal monthly installments on or before the first day of each month, in advance. The rental for the last year of the within term, (the year 1945) to be

paid to First Party at the time of the execution of the within lease, the payment of said last year's rental is acknowledged by First Party as having been received by its execution of the within lease."

Also, your Honor, that the term of the lease expires in 1945.

"To have and to hold the same unto the Second Party for the term of Five Years (5), beginning on the first day of January, 1941, and ending on the 31st day of December, 1945."

That is all.

Cross-examination.

By Mr. Rogers:

Q. Mr. Sperry, I believe you testified yesterday that at the expiration of the first term that was granted to Mr. Long on the Memorial Theater, there was an opportunity afforded him to come in and negotiate with the Trustees for further renewal?

[fol. 336] A. That is at the end of the five years.

Q. That is at the end of the five-year period, Mr. Sperry?

A. Yes, that is right.

Q. He did come in and present a definite proposal for the year, is that right?

A. Not definitely, I wouldn't say.

Q. You made the lease for the year, didn't you?

A. You mean this is the extended year?

Q. Yes, the extended, Mr. Sperry?

A. I thought you were referring to the end of the term entirely.

Q. No, I said the first lease. Isn't that right?

A. Yes.

Q. You came in and met the Trustees?

A. Yes.

Q. With the definite proposal?

A. Yes.

Q. You discussed the definite proposal?

A. That is right.

Q. Even though you had another proposal from Schine that was better since you gave it to Mr. Long?

A. That is right.

Q. On an open competitive basis?

A. That is right.

Q. And, as I understand that extending term of one [fol. 337] year, it had a provision in it giving Mr. Long another opportunity to come in at the end of that year?

A. And negotiate again.

Q. And again negotiate. Is that accurate, Mr. Sperry?

A. That is right.

Q. That extended year, as I understand it, expired December 31st, 1940, is that right? The original term was from 1935 to 1939, isn't that right?

A. Yes.

Q. And you gave him an additional year beginning January 1st, 1940, and ending December 31st, 1940?

A. Yes.

Q. And this one year option for renewal?

A. That is right.

Q. As I recall, under this option for renewal he again had the right to come in and again negotiate with you for a further lease?

A. Yes.

Q. On terms as to be agreed between himself and the Trustees?

A. Yes.

Q. And that he served a notice which you said was timely?

A. That is right.

Q. Did you give him that opportunity? And you received that notice?

[fol. 338] A. Yes.

Q. After you received that notice which I recall is dated September 30th, 1940, did Mr. Long come in to see the Trustees, to present any definite proposal for a renewal of that lease?

A. Not to my knowledge.

Q. Did he ever come in to discuss any proposition with you for renewal of the lease?

A. I don't think in a meeting, but I think a casual meeting with him in the street or in the theater some place, he might have suggested that he wanted to talk to us on how he could set up a new contract. There were no definite figures offered.

[fol. 339] Q. And was that just a casual talk with you personally?

A. Yes, sir.

Q. And was it by reason of the casualness of this talk

and the indefiniteness of any proposal on his part that the Board of Trustees decided to advertise for bids?

A. That is right.

Q. Is that right?

A. Well, we advertised, I think, before that, if I am not mistaken. I can't give you the exact date of the advertising.

Q. I only want to get your best recollection of it.

A. I think the advertisement came out in the summer, in the early summer, if I am not mistaken. We wanted to get the thing cleared up.

Q. That is in the summer of 1940?

A. Yes, sir.

The Court: Why would you advertise then if he had this right to negotiate?

The Witness: Well, to be candid, we wanted to be in position, if he didn't make a proposal, to have somebody to fall back on. There was some doubt in our mind as to whether he would want to continue.

Q. Then I understand, Mr. Sperry, and correct me if I am [fol. 340] mistaken, that as early as the summer of 1940 there was grave doubt in the minds of the Trustees as to whether Mr. Long would make any proposal for an extension of that lease, was there?

A. He was having difficulty, I would say, in meeting his obligations and in operating the theatre at that time.

Q. At that time you say?

A. Yes, sir.

Q. And you felt that he was not going to come in?

A. That is right.

Q. After you advertised for your bids did that advertisement call for written bids?

A. I think it did. I haven't got a copy of it right here.

Q. Is it your best recollection that it called for written bids?

A. I think so.

Q. Did the Schine interests give you a written bid?

A. We had several communications from the Schine Company.

Q. Did Mr. Long give you any written bid?

A. No.

Q. None whatever?

A. No.

The Court: Were there other bids?

The Witness: Very few. I think one or two. It was a local advertisement, as far as that is concerned. The first [fol. 341] time that we advertised the theatre for lease we went into the theatre magazines and we got a lot of inquiries at that time.

Q. Might I suggest, Mr. Sperry, wasn't the time set for these bids limited to November of 1940?

A. That sounds about right: It sounds right. That is the way we would want it normally to be.

Q. Isn't it your better recollection that you did not insert the advertisement for bids until the month of October, 1940? I just want your best recollection.

A. I thought it was earlier than that.

Q. Pardon?

A. I thought it was earlier than that. I can't remember.

Q. But it might have been in October?

A. It might have been October.

Q. You gave Mr. Long every possible opportunity to come in and renew his lease, didn't you?

A. That is right.

Q. As a matter of fact, on one occasion you actually sent for him and asked him to come before the Board of Trustees?

A. Yes, sir.

Q. Did he show up?

A. No.

Q. He did not?

A. No.

[fol. 342] Q. You didn't grant any preference to the Schines on that bid, did you?

A. No.

Q. Just treated it as an open bid?

A. Yes.

Q. As among Schine and several others who sent in bids on the theatre?

A. Yes, sir.

Q. And you gave it to Schine on an open, competitive basis?

A. Yes, sir.

Q. And if Mr. Long at that time had sent a bid to you you would have considered that bid at the time, wouldn't you?

A. I would.

Q. And weighed his bid as against the Schine bid?

A. That is right.

Q. As you did before?

A. Yes.

Q. From the time that the Schines took over the operation of the Memorial Theatre, which was on January 1st of 1941, have they constantly kept that theatre open and operating?

A. Absolutely.

Q. And have they conducted the premises in a proper manner?

A. Excellent.

Q. Pardon?

[fol. 343] A. Excellent.

Q. Did they put money into refurbishing and redecorating and beautifying the premises at their expense?

A. Yes, sir.

Q. And have they maintained it in good condition?

A. Yes, sir.

Q. Met their obligations under their lease?

A. Absolutely.

Q. You recall that Mr. Boggess read a provision from that lease, as follows: "Second party (which means the Schines) hereby agrees to operate the leased theatre daily and Sunday, giving at least one performance every night unless second party is prohibited from so doing by violence, fire or any circumstances beyond the control of the second party."

As a matter of fact, Mr. Sperry, although this lease requires them to give one performance nightly, haven't they been giving regularly two performances every day, a matinee performance and an evening performance, since that theatre has been opened?

A. No. A matinee on Sunday, if I remember correct.

Q. You say they have been giving matinees Sundays?

A. Sundays.

Q. Haven't they been giving two performances at night?

A. That is probably true. That is, they repeat the pictures.

[fol. 344] Q. So that on week days they have given two performances every night although their obligation was to give only one?

A. Yes. The show is opened at night and I think it is true they run two shows.

Q. On Sunday they give three shows instead of only one show, as they were obligated to do; is that right?

A. That is right.

Q. With reference to the quality of entertainment they have been giving in the Memorial Theatre, had that been high-class, satisfactory entertainment to the public?

A. Absolutely.

Q. Has the public been satisfied with the manner in which that theatre has been operating and the kind of pictures that they have been getting?

A. To my best knowledge.

Q. In 1939-1940 generally what were the economic and business conditions of Mt. Vernon generally?

A. Well, I would say it was an average town. We haven't as yet had any great increase in employment, although there was no unemployment to amount to anything, as there was back in the '30s, but of course in the last four years, why, we have picked up like every other community. We have an employment that is probably 5,000, I would say, where it was 3,000 before; I mean in industry.

[fol. 345] Q. So that generally in the past four years and constructively from 1940 on conditions have got better in the town?

A. Absolutely.

Q. Employment far better?

A. Yes.

Q. And a definite increase in population in the town?

A. Yes, some, although it is not a boom town. There are no new factories.

The Court: What is the population?

The Witness: About 12,000, sir.

Q. Economically from 1940 on the chart would show an upward trend of better conditions from 1940 to the present?

A. That is right.

Q. With reference to the Vernon Theatre, you recall when that theatre was built, don't you?

A. Yes.

Q. And you have visited that theatre, haven't you?

A. Yes.

Q. Is that theatre a newly constructed theatre?

A. Yes, sir.

Q. And what, generally, would you say as to the physical appearance of that theatre and its physical equipment?

A. I think it is something the town can be proud of.

Q. It is a high class, beautiful, modern theatre, isn't it?

A. Yes.

[fol. 346] Q. Upholstered seats?

A. Yes, sir.

Q. Carpeted?

A. Yes, sir.

Q. A ventilated theatre?

A. Yes, sir.

Q. Beautifully decorated?

A. Yes, sir.

Q. That theatre has been a definite improvement to the town, hasn't it?

A. Yes.

Q. The town warranted that kind of a theatre in the heart of the town, did it not?

A. I think after they saw it they were glad they had it, but I don't know as it was a desire before. I think that there was a feeling that the Memorial was fairly well equipped to handle the demand that was there.

Q. That was before the Vernon was built, you mean?

A. Yes, sir.

Q. But after it was built the town was proud of the Vernon, was it not?

A. Yes, and I think there is a place for the two theatres in the town, as far as that is concerned.

Q. Did this Vernon Theatre help to improve business con-

[fol. 347] ditions in the town?

A. There is no doubt about that, through their employment.

Q. You say there is no doubt about that?

A. Yes.

The Court: You said there are two theatres?

The Witness: Yes, sir. The other theatre is not open all the time.

Q. When you say the other theatre, that is the Vine?

A. The Vine.

Q. That is a pretty old theatre, isn't it?

A. Yes.

Q. And that is open week ends, isn't it?

A. Yes, sir.

Mr. Rogers: Thank you, Mr. Sperry.

Mr. Wright: That is all, Mr. Sperry.

CLIFFORD L. DASHER, a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Dasher?

A. At VanWirt, Ohio.

[fol. 348] Q. What is your occupation?

A. A small farmer.

Q. You were formerly in the theatre business at VanWirt?

A. That is right.

Q. In connection with what theatre?

A. The Strand Theatre.

Q. That was during what period?

A. About 1918 to 1935.

Q. What was your connection with the theatre?

A. I was Manager, with Mr. Tom Evans.

Q. He was also a resident of VanWirt?

A. That is right.

Q. Calling your attention to the 1934-1935 motion picture season, what product of the major film companies were you playing first run in the Strand Theatre there?

A. The five major companies, Paramount, Metro, 20th Century-Fox, R.K.O. and Warner Bros.

Q. Was another theatre opened in VanWirt in 1934?

A. There was, in October, I believe.

Q. What was the name of that theatre?

A. They called it the Ohio.

Q. And after that theatre opened do you know what they played there?

A. They played Columbia, Universal, Monogram, and some more of the smaller companies.

[fol. 349] Q. That theatre was operated by the Moores?

A. Yes, sir.

Q. Early in 1935 was construction started on another theatre in VanWirt?

A. Yes, sir.

Q. Do you remember when that was?

A. I think they started construction in May, if I remember correctly.

Mr. Rogers: What year?

The Witness: 1935.

Q. Had you heard about the construction of the new theatre before that?

A. Yes, in January it sounded pretty positive that somebody else was goin to erect a theatre there.

Q. After you heard there was going to be a third theatre there what, if anything, did you do about securing first run product for the 1935-1936 season?

A. Well, there was a salesman came in, for instance, from Fox, Sam Lichter was the salesman. He came in and I contacted him for the 1935-1936 pictures. This was a couple of months, you understand, before the selling season usually started.

[fol. 350] Q. And what was the talk you had with him?

Mr. Rogers: May we have the date of that talk fixed, please?

The Court: A couple of months before the selling season.

Mr. Rogers: Some start early, some start a little later.

Mr. Wright:

Q. In the spring of 1935?

A. That is right.

Mr. Rogers: May we get the name of the salesman? Mr. Lichter, I beg your pardon.

Q. Was a deal made for the Fox, 1935-1936 product?

A. Yes, sir.

Q. That was in the spring of '35?

A. Right.

Q. And then did you get the R.K.O. product for '35-'36?

A. That is right.

Q. That was a continuation of the first-run?

A. That is right.

Q. And then you had the Warner's product for '35-'36?

A. That is right.

Q. Did you try to get the first run of Paramount for '35-'36?

A. I did.

Q. What did you do in that connection?

[fol. 351] A. They didn't have their contract ready or know exactly what they were going to have.

Q. When was this they told you that?

A. That was in March, as I remember.

Q. Who told that to you?

A. I believe it was Mr. Robb, a salesman.

Q. And did you see the salesman or any one else in Paramount later on in the year about the '35-'36 product?

A. Yes, in June after I heard they were selling I went to Cleveland.

Q. You mean after the selling season opened at Paramount?

A. Yes.

Q. Who did you see?

A. Mr. Hemmline.

Q. Did you have a conversation with him there about getting 1935-1936 product first-run?

A. I did, but he said that Schine's bought their pictures.

Q. He said Schine's bought their pictures first-run?

A. Yes.

Q. Did you have any further discussion with him?

A. Not there.

Q. As to why he sold to Schine's instead of to you?

A. No.

Q. What, if any effort did you make to get the Loew or Metro product for the '35-'36 season?

[fol. 352] A. When the salesman—I can't recall his name.

Q. You first saw the salesman. When was that?

A. That was in March.

Q. '35?

A. That is right.

Q. What did he tell you?

A. He told me they didn't know what they were going to have. They were usually pretty far behind in their contracts what they were going to have.

Q. Did you later go in and see the Loew Branch Manager in Cleveland?

A. In June I went in to Cleveland.

Q. This was the same time you went in to talk to Paramount?

A. Yes.

Q. Who did you see there?

A. I talked to Mr. Drew, the Regional Manager.

Q. Of the Loew Office?

A. Yes.

Mr. Rogers: Can we get the date of that?

The Court: June.

Mr. Wright: This was in June.

Q. What was the conversation you had with Mr. Drew at that time?

A. I asked Mr. Drew for his '35-'36 product. He said he was sorry but they had to sell Schine.

[fol. 353] Q. Did he tell you why?

A. Well, when I asked him why, after me buying their pictures for about 12-15 years, that they would turn me down now. They said "Well, Schine has 60 theaters you have got one. What do you expect us to do?" And they said "He won't just stand for selling your town, he wouldn't take any of the other towns. You can see where I stand with you. I would like to give it to you, but I can't."

Q. Is that all of the conversation you had with him then?

A. That is right.

Q. Then did you see any of the other Exchange managers in Cleveland at that time?

A. That is right, from there I went over to Fox, as I had some bookings to make, dates set on the pictures.

Q. Bookings under the contract for '35-'36 that you then had?

A. '34.

Q. Of the existing contract?

A. Yes.

Q. Who did you see over there?

A. I went to the booker and while I was talking to the booker, Mr. Schmertz sent word out for me to come in his office before I left.

Q. Who was Mr. Schmertz?

[fol. 354] A. He was District Manager there.

Q. You went in to see Mr. Schmertz?

A. That is right.

Q. What was the conversation there?

A. When I stepped in there he said, "You've got me in a hell of a mess." I said "Now, what is the matter?" He said "I have a letter from Schine. You said they weren't coming in, not to save any pictures. It looks like I am going to have to take half of it away from you."

Q. What did you say about that?

A. I said "I don't think you are going to do that, because I don't think we will stand for it." He said, "Well, we are going to have an awful time."

Mr. Rogers: Pardon me just a minute, Mr. Dasher. I move to strike so much from the testimony as refers to the contents of a letter which is not before the Court as an exhibit.

Mr. Wright: He simply stated what Mr. Schmertz told him.

Mr. Rogers: That is just another way of Mr. Wright doing what he has been doing right along here, trying to get in through conversation, what he knows he can't get in otherwise. I think it is time this stopped and Mr. Wright should lay a foundation for a document and not have a [fol. 355] witness testify to the contents thereof.

The Court: Overruled.

Mr. Wright: Will you read the answer?

(Last answer read.)

Q. What was the rest of the conversation?

A. Then he said, "Why don't you get together with Schine, make a deal with him?" I said, "He isn't interested in my theater or he would have come and saw me. He had plenty of time." He said "If I sent him down, will you talk to him?" I said I would be willing to, but I would have to take it up with Mr. Evans, if he was willing to, it would be perfectly all right with me.

Q. Is that all the conversation?

A. That was practically all of the conversation.

Q. Did you receive a visit from any representative of Schine?

A. Yes, sir. About a short time later Mr. May and Mr. Lazarus called at Mr. Evans' office.

Q. Who was present then?

A. Mr. Evans and Mr. May and Mr. Lazarus, and myself.

Q. And what was said then?

A. Well, they asked us if we would be interested in selling or making a lease on our theater, and we told him we would be willing to make either.

[fol. 356] The Court: What?

Mr. Wright: He said we told him we would be willing to make either.

The Court: All right.

The Witness (Continuing): That we preferred to sell. They preferred a lease, so we talked terms as such and they took a tentative proposition and said they would be back.

Q. Then did you see them again later?

A. That is right. In August, I believe, or the early part of August we saw them again. We got together and ironed out a few things that weren't satisfactory and made the lease.

Q. That is you leased the theater to Schine then in August, 1935?

A. That is right.

Q. And they took over the operation when?

A. On September 1st, if I remember correctly.

Q. 1935?

A. That is right.

Q. And then what did you do after Schine took over the operation of the theater?

A. I worked for Schine a couple of weeks and then resigned.

Q. You have had no connection with the Schine Company, or the theater since?

[fol. 357] A. No, sir.

Mr. Wright: You may cross-examine.

Mr. Rogers: No cross-examination.

Mrs. Lottie Moore, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live?

A. Vanwert, Ohio.

Q. You are connected with the Ohio Theater in Vanwert?

A. That is right.

Q. In what capacity?

A. I help Mr. Moore in the operating of the theater. Mr. Moore is my husband.

Q. When was that theater opened?

A. October, 1934.

Q. And at the time the theater was opened, what major film product were you able to get for the first-run?

A. United Artists, Columbia and Universal.

Q. You had those first-run for the 1934-1935 season?

A. That is right.

[fol. 358] Q. Then do you recall there was another theater built there in 1935?

A. That is right.

Q. What was the name of that theater?

A. Schine's Vanwert.

Q. Do you remember about when that opened?

A. It opened, I think, in August, 1935.

Q. Did you handle the correspondence with the distributors?

A. That is right.

Q. In connection with buying films for the theater.

Mr. Wright: I will ask to have this series of four letters marked with the next four plaintiff's exhibit numbers, the first one is letter dated July 23rd, 1935, to United Artists Corporation at Cleveland, from Carl B. Moore.

(Thereupon the letter dated July 23rd, 1935, to United Artists Corporation at Cleveland from Carl B. Moore, referred to, was marked as Plaintiff's Exhibit P-17 for identification.)

Mr. Wright: The next a reply from United Artists to Mr. Moore, dated July 24th, 1935.

(Thereupon letter dated July 24th, from United Artists to Mr. Moore, referred to, was marked as Plaintiff's Exhibit P-18 for identification.)

[fol. 359] Mr. Wright: I will not have the others marked.

Q. Mrs. Moore, I hand you these two exhibits, Plaintiff's Exhibit P-17 and P-18. Did you write Exhibit P-17 and sign the name Carl B. Moore on it?

A. I did.

Q. That is your husband's name?

A. Yes.

Q. Is this Exhibit P-18 a copy of the reply you got from United Artists?

A. That is right.

Q. You have attempted to locate the original, have you?

A. I have.

Q. You haven't been able to find it?
A. I have not.

Mr. Wright: I will offer these exhibits P-17 and P-18 in evidence.

Mr. Rogers: I object on the ground it is not binding on the defendants.

The Court: Overruled.

(Thereupon the letters previously marked as Plaintiff's Exhibit P-17 and P-18 for identification were received in evidence.)

(Mr. Wright read the exhibits P-17 and P-18.)

Q. Then after you got this letter of July 24th, that I just [fol. 360] read, Exhibit P-18, did Mr. Levin come to see you?
A. No, he didn't.
Q. Then you go in to see Mr. Goodman?
A. We did.
Q. When was that?
A. The latter part of August or first of September in 1935.
Q. When you say "we," who are you referring to?
A. My husband, Mr. Moore.
Q. What was the conversation you had with Mr. Goodman then?
A. We went in to see Mr. Goodman to find out why we were not going to get United Artists and why Mr. Levin didn't come down.

Mr. Rogers: I object to that. There is no evidence up to the present time that intimated any one would get the product.

The Court: State the conversation. What was said?

Mr. Rogers: May I have that stricken at present?

Mr. Wright:

Q. Just give us your best recollection, Mrs. Moore, as to what was actually said at this conversation, what was said by you?
A. We asked Mr. Goodman about having the product for [fol. 361] our Ohio Theater and he said, "Mrs. Moore, there is nothing I can do about it. It has been sold to the Schine Theater Enterprises at their New York office." And I asked him if he felt that was a nice way to treat us after all these years we have been a customer of his.

Q. When you say "all these years," you had been a customer of his in other locations?

A. Yes, that is right. We have been in the business for over 20 years.

Q. Go ahead with the conversation.

A. So he said there was nothing he could do about it.

Q. Was that all the conversation?

A. That's all.

Q. Were you able to keep the Columbia pictures, first-run, for the '35-'36 season?

A. We did.

Q. Then did you try to again secure them for the '36-'37 season?

A. We did.

Q. What did you do in that connection?

A. We contacted their salesman, George Becker, and could get nowhere with him.

Mr. Rogers: May we get the date of that and what the conversation was?

Q. When did you talk to George Becker?

[fol. 362] Mr. Rogers: Pardon me. And I move to strike the conclusion out of the record.

The Court: Yes. State the conversation. State the conversations you had with the agent, if any. You said you tried and couldn't get anywhere. That is your conclusion.

The Witness: In the summer of '35.

The Court: '34 and '35?

Mr. Wright:

Q. You also had it for '35-'36, as I understand it?

A. Yes.

Q. What I asked you about was '36-'37 season.

A. In the summer of '36.

Q. In the summer of '36 you talked to Mr. Becker, the Columbia salesman. Where was that at Vanwert?

A. At our home in Vanwert.

Q. What was said then about the '36-'37 product?

A. He advised us that he could do nothing about it and to come in to Cleveland and see their Branch Manager, Mr. Bissell.

Q. Did you go in to Cleveland to see Mr. Bissell?

A. We did.

Q. When was that?

A. In the fall of '36.

Q. When you say "we" that was you and Mr. Moore?

[fol. 363] A. That is right.

Mr. Rogers: Pardon me. May we have Mrs. Moore fix that a little more definitely.

Q. Can you fix it any more definitely than the fall of '36?

A. Latter part of August or the first of September.

Q. Did you see Mr. Bissell?

A. For a little while we did.

Q. What conversation did you have with him, if any?

A. We were unable to contact him in the office as he was very busy with some chain representatives of theaters.

Mr. Rogers: I move to strike it out, not responsive.

The Court: Let me ask you what conversation you had with Bissell? Did you have any talk with Bissell?

The Witness: We did.

The Court: Then you may state that talk.

Mr. Rogers: I ask to have that stricken out.

The Court: Strike it out.

Mr. Wright: I think she can state the circumstances of the conversation.

Q. You didn't have the opportunity to see him at his office, is that right?

A. We did not.

Q. You saw him as he was coming out of his office with these chain people?

[fol. 364] A. That is right.

Q. What was the conversation?

Mr. Rogers: May I suggest Mrs. Moore, who seems to be a very intelligent witness, to testify instead of leading her and putting her testimony into her mouth.

The Court: I think some of the answers are immaterial. He is asking her the question. State what talk you had with Mr. Bissell when he was coming out of his office.

The Witness: We asked him for first-run product for Ohio, for our theater for '36-'37. He said, "Mrs. Moore, the product has been sold to Schine Theater Enterprises", and I said, "Do you think that is a nice way to treat us? We have been a customer for all these years." He said, "There is nothing I can do about it. The deal was consummated in New York,—and with that he walked out.

[fol. 365] Q. Now, then, you had Universal first run during the 1934-1935 season?

A. We did.

Q. And also for the 1935-1936 season?

A. We did.

Q. Then did you get a first run contract with the Universal again for the 1936-1937 season?

A. We did not.

Q. You didn't play the pictures 1936-1937?

A. We didn't play them, but we had a contract.

The Court: You say you had a contract?

A. Yes, sir.

Q. You had it, as I understand it, when you went in in 1934-1935; is that right?

A. Yes, sir.

Q. And then you got a first run contract again for 1935-1936?

A. That is right.

Q. Then was it about that time that Mr. Silverman started to book some of your pictures for you?

A. That is right.

Q. That was when?

A. August of 1935.

Q. What was Mr. Silverman's full name?

A. Solomon Silverman.

[fol. 366] Q. What, if anything, did he do for the Ohio Theatre, in connection with Universal first run 1935-1936 pictures?

A. He said that the contract was bought too high.

Mr. Rogers: One moment. I move to strike that.

The Court: Yes. Silverman was Moore's representative, was he?

Mr. Wright: He acted as booker for them and he later went to work for the Schine Company.

The Court: She cannot testify to what he said.

Q. Well, do you know of your own knowledge——

The Court: Did he arrange the bookings for 1935 or 1936 for your theatre? You say he did?

The Witness: Yes, sir.

Q. In connection with the Universal Pictures; is that right?

A. Yes.

Q. He handled the negotiations?

A. Yes, sir.

Q. Well, now, do you know of your own knowledge, Mrs. Moore, what was done with reference to the playing of the 1935-1936 Universal films in your Ohio Theatre?

A. He said it would be better——

Q. Not what he said. Just what was actually done.

The Court: What was done about running these pictures?

The Witness: He exchanged the first run pictures for second run for VanWert, Ohio.

Q. Do you remember about when that was?

[fol. 367] A. It must have been in the fall of 1935.

Q. Then when was it that Mr. Silverman left your employ or stopped booking your pictures to go to work for Schine?

A. After the first of the year in 1936.

Q. Do you know about what month?

A. I would think it was in January or February.

Q. Now, then, did you play the Universal Pictures second run?

A. We did not.

The Court: You did not, you say?

The Witness: We did not.

Q. Did you have any further negotiations with the Universal people about the 1935-1936 pictures?

A. Through Mr. Silverman, yes.

Q. Other than through Mr. Silverman, and after he left to go with Schine, when was the next time that you had any contact with the Universal salesman or branch manager?

A. Several months after that they came back.

Mr. Rogers: After what? May we have that fixed? Several months after what, Mr. Wright?

Q. Several months after what? After——

A. After the second run deal, after we had bought the second run deal.

The Court: You changed the run from first to second run several months after that?

The Witness: Yes, sir.

[fol. 368] Q. That would be in the spring of 1936?

A. Right around that, yes.

Q. Who did you talk to then from Universal?
A. Their salesman.
Q. What was his name, do you remember?
A. I believe it was Jack Withers.
Q. Where was this conversation?
A. At our home.
Q. What was said then?
A. He wanted to cancel the second run and wanted us to take a first run again.
Q. What did you say to that?
A. We had been unable to get a second run——

Mr. Rogers: I move to strike that.
The Court: Strike it out.
Mr. Wright: Don't state your conclusions. Just say as nearly as you can what you said.

A. We were unable to get their second run pictures.
Q. Is that what you said to him at that time?
A. I told him if we are to buy back a first run deal we want it for this year and for the next.
Q. That is for 1935-1936 and 1936-1937?
A. That is right.
Q. What did he say to that?
A. He said he would be unable to do that.
[fol. 369] Q. Did he tell you why?
A. Yes, because he said the Schines would buy that.

The Court: Did he offer it to you for a year? You say he came to you and tried to get you to take the first run?
The Witness: Yes, sir.

Q. That was for 1935-1936.
A. He wouldn't license us for 1937 and 1938 product.

The Court: You wanted two years, rather than one year?
The Witness: Yes, if we were to take back the first run.

Q. Then did you have any further conversation with anybody from Universal about getting first run Universal films?
A. Only their salesman, that is all.
Q. You didn't go into the branch office at Cleveland?
A. No.
Q. Then beginning with the 1936-1937 season you had no first run product; is that right?
A. That is right.

Mr. Rogers: Pardon me. I thought the witness testified they had a contract with Universal for 1936-1937 first run but that they didn't play them.

Mr. Wright: As I understood her testimony it was that they had one for 1935-1936, which was changed to a second [fol. 370] run, and then they wanted to reinstate it as a first run and they were unwilling to reinstate the first run unless they could have the next season; they wouldn't give them the next season, so that they didn't get either.

Mr. Rogers: That is not what the witness testified to.

The Court: That is the way I have it, that in the fall of 1937 she talked about exchanging second run, which she had, exchanging the first run for second run.

Mr. Rogers: In the first part of the witness's testimony she testified that the 1935-1936 contract was O.K. They made one for first run. They made a 1936-1937 contract for first run, but never played it. That was her testimony on the very opening part and Mr. Wright practically led her into it.

Mr. Wright: All we are interested in, of course, is getting the truth.

The Court: You are talking now about Universal?

Mr. Rogers: Yes. That is her testimony.

The Court: Go ahead.

Q. Let us clear it up, then, once and for all. As I understand your testimony, Mrs. Moore, it is that you did have a first run contract for Universal for the 1935-1936 season; [fol. 371] is that right?

A. Yes.

Q. And then that was exchanged for a second run contract for that season; is that right; some time in the fall of 1935?

A. I think we had it for 1936 and 1937.

Q. Now, let us get the sequence on this. As I understand it, then, you had a first run contract for 1934-1935 with Universal? That was the first year you were in there. And then you again got Universal for 1935-1936 first run; is that right?

A. Yes, sir.

Q. Is it a fact that in the fall of 1935 you then exchanged that first run for a second run 1935-1936 contract?

A. No, that is wrong.

Q. Well, what is right?

A. It is 1936 and 1937.

Q. Then you had it for 1934-1935 and 1935-1936; is that right? And then you got a first run contract for 1936-1937?

A. Yes, sir.

Q. I call your attention again, Mrs. Moore, to the dates that Mr. Silverman worked for you. As I understood it, you said he came in as a booker for you in the fall of 1935; is that right?

[fol. 372] A. That is right.

Q. And that he left you to go to work for Schine in the early part of 1936; is that right?

A. That is right.

Q. And I understood you to say that Mr. Silverman was the one who handled the negotiations for changing the 1935-1936 contract from the first to a second run; is that right?

A. That is right.

Mr. Rogers: No, this witness testified differently. If that is her testimony I move to strike it.

The Court: Let her state what the fact is.

Mr. Rogers: If Mr. Wright is correct I move to strike all her testimony.

The Court: My recollection is that she said they exchanged for second run in the fall of 1935 and that year that Silverman was their agent, and in 1936 Silverman went to Schine.

Q. Is that right, Mrs. Moore?

A. That is right. The other is wrong then. I was wrong.

Q. It is a fact, then, that it was the 1935-1936 contract where you first had first run that was changed to second run; is that right?

A. That is right.

Q. And that then you——

[fol. 373] Mr. Rogers: Pardon me for interrupting, but if Mr. Silverman is the man who conducted those negotiations then I move to strike Mrs. Moore's testimony.

The Court: You mean the negotiations with reference to exchange?

Mr. Rogers: Yes.

The Court: It depends on her knowledge of it, that is all. If she was there she can testify. If she was not she can't testify.

Mr. Wright: She had not testified as to what his negotia-

tions were. She has testified simply as to what the results were.

The Court: He was their agent.

Mr. Rogers: But, may it please the Court, I think we are entitled to get evidence that is probative here. If Mr. Silverman did something and Mrs. Moore was not even present, or Mr. Moore had the conversations and negotiations, this witness is not qualified to testify.

The Court: The fact that they did change from first class to second class she can testify to.

Mr. Rogers: I am merely directing my motion to so much of her testimony as to the negotiations which apparently she was not present at.

The Court: I do not know whether she was or not.

[fol. 374] Mr. Rogers: Mr. Wright said so.

The Court: All right, we will strike out any statement of hers with reference to the negotiations between Silverman and the Universal.

Mr. Wright: All that she stated is that Silverman carried on the negotiations with Universal, which I think is perfectly proper. She knows that of her own knowledge.

The Court: She knows he was her agent. She knows they were changed in the fall.

Mr. Wright: That is right. That is all we are undertaking to show.

Q. I take it, then, Mrs. Moore, it is a fact that in the fall of 1935 the Universal 1935-1936 contract was changed from first to second run; is that right?

A. That is right.

Q. And then Mr. Silverman, as you say, went to work for Schine in the early part of 1936?

A. That is right.

Q. And the next dealings that you had with the Universal representatives were when you talked to this salesman at your home, and that was what—in the spring or summer of 1936?

A. In the summer.

Q. And that was when they wanted to change the second [fol. 375] run back to a first run?

A. Yes, sir.

Mr. Rogers: Pardon me, Mr. Wright. Don't you think we had better have some of the testimony from this witness?

And I want to get whether or not Mrs. Moore had this conversation.

The Court: Objection sustained. It is leading.

Mr. Wright: I just wanted to get it straightened out.

Q. In any event, then, did you have any further conversation, other than those you have testified to as having occurred in 1936 with the Universal salesman about getting first run pictures from Universal?

A. No.

The Court: Did you say no?

The Witness: No.

Q. And were the 1935-1936 Universal pictures exhibited by you on either first or second run?

A. No.

Q. Then as I understand it beginning with the 1936-1937 season you then had no first run product for your Ohio Theatre; is that right?

A. That is right.

Mr. Rogers: One moment. I object to that as immaterial what Mr. Wright's understanding is. Let us get some testimony.

[fol. 376] The Court: The question is leading.

Q. What, if any, first run product did you have at the Ohio Theatre for the 1936-1937 season?

A. None only independent companies.

Q. You mean by independent companies distributors other than the eight majors?

A. That is right.

Q. And those are what?

A. Republic Pictures and Monogram.

Q. Those are the independents you are referring to?

A. That is right.

Q. You were then operating on a second run policy; is that right?

A. That is right.

Q. Did you have the Metro pictures second run?

A. We did.

Q. Do you remember for what years?

A. 1935 and 1936.

Q. You were playing them second run after they played first run in what theatres?

A. Schines.

Mr. Rogers: One moment. May it please the Court, may we have some evidence of Mrs. Moore? Up to the present we have only had Mr. Wright's evidence. I insist that Mr. Wright ask questions and get testimony and [fol. 377] stop giving the testimony himself and stop the leading questions.

The Court: I think you should be cautioned about that. Let her state what runs they had from Metro at that time.

Q. What, if any, pictures that you played second run in the Ohio—what theatre did those pictures that you played second run in the Ohio play a first run in?

A. Schine's VanWirt.

Q. Did you have the Metro second run for the 1936-1937 season?

A. Do you mean 1937 and 1938? Will you state that again, please?

Q. Can you tell us what seasons you had the Metro pictures second run in your Ohio Theatre?

A. 1934 and 1935 and 1935 and 1936.

Q. Did you have it for 1936-1937?

A. No.

Q. Are you sure, Mrs. Moore, you didn't have it for 1935-1936 and 1936-1937 instead of 1934-1935 and 1935-1936?

A. That is right.

Q. What is right?

A. 1936 and 1936 and 1936 and 1937.

Q. Those were the years you had it second run?

A. That is right.

[fol. 378] Q. Then did you try to get them second run for the 1937-1938 season?

A. We did.

Q. What did you do in that connection?

A. We contacted their salesman.

Mr. Rogers: Let us get dates and times fixed.

Q. When was that?

A. In the summer of 1937.

Q. And who was the salesman that contacted you, do you remember?

A. Mr. Brauer.

Q. Where was that?

A. At our home in VanWirt.

Q. What was said then?

A. We wanted to buy their pictures second run, as we had been doing.

Q. You said that, and what did he say?

A. He said, "I can't offer them to you at his time. You will be forced to come into the office and see our Branch Manager, Mr. Drew."

Q. Then did you go in to see Mr. Drew?

A. We did.

Q. When was that?

A. In the fall of 1937.

Q. Can you fix the date any more accurately than that?

[fol. 379] A. It must have been early September.

Q. Who was present when you saw Mr. Drew?

A. Mr. Moore, my husband.

Q. What was said then?

A. We asked him about the product and he said it had been sold to Schine's VanWirt—not to Schine but to the Schine Theatres, to run in their Strand Theatre.

The Court: You said that was in September. That would be after the usual sale period, wouldn't it, the commencement of the sale period?

The Witness: In a town like ours we don't always buy the product in the spring.

Q. When did the first run begin playing?

A. It all depends on the national release of the pictures.

Q. I take it the first releases of the season occur in about September; isn't that right?

A. Sometimes earlier.

Q. August or September, and then the pictures play the first run theatres shortly after release?

A. That is right.

Q. And it is not until some time after that that they begin to run in the second run theatres; is that right?

A. 60 to 90 days after.

The Court: You mean the contract for the second run pictures is usually made subsequent to September?

[fol. 380] Q. Do you recall when you had made your prior Metro second run contracts, what time of the year?

A. I remember when we made the 1938 and 1939. It was in January. And 1940 and 1941 was in August.

Q. Do you remember the prior years before this 1937 and 1938?

A. No.

Q. As I understand it, you had this discussion with Mr. Brauer—that was in the summer of 1937?

A. That is right.

Q. You think this conversation with Mr. Drew was some time in September, in the Cleveland office?

A. That is right.

Q. Was there anything unusual about that timing in so far as your purchasing second run product was concerned?

Mr. Rogers: Pardon. The witness has testified she does not recall when she bought her product in prior years. Therefore she can't testify whether it was usual or unusual.

The Court: I do not know as there was anything usual about it. Was it customary for you to make leases in September in connection with second run pictures? The point about this, it seems to me, is they were usually let in the spring and if it was made in September she would be out as far as anything is concerned.

[fol. 381] Mr. Wright: She has already testified the salesman who called in the summer told her they were not available and for them to come into the office.

Mr. Rogers: No, that is not the witness's testimony. She said that he said he couldn't do anything about it, that she would have to go to the branch office. That is all she said.

The Court: The point was I wanted to know what the custom was with reference to the usual time of the sale of the second run pictures.

Q. In the course of your experience in buying pictures, Mrs. Moore, had you had product sold away from you under those conditions in the ordinary course of business?

Mr. Rogers: One moment. I object to that as calling for a conclusion, and I object on the ground that the witness has not even been qualified.

The Court: Sustained.

Q. In any event, may we have the conversation which you had with the Exchange Manager at Cleveland when you did go in to see him about the second run 1937-1938 product?

Mr. Rogers: May it please the Court, we have had the testimony.

The Court: She testified to that.

Q. Was that all the conversation?

A. At that time.

[fol. 382] Q. Did you talk to him again about it?

A. We did.

Q. When was that?

A. In the spring of 1938.

Q. Where was that conversation?

A. At Lima, Ohio.

Q. How did you happen to see him over at Lima?

A. He called us up from Lima and asked Mr. Moore and I to come over there and see him.

Q. When you say "he" you are talking about who?

A. Mr. Drew.

Q. You saw him over at Lima?

A. That is right.

Q. What was said then?

A. He wanted to know if we would be interested in a part of the 1937 and 1938 product second run for Van Wert.

Q. What did you say?

A. I said, "Mr. Drew, how could you sell them to us, Schine has them bought?"

The Court: What is that?

The Witness: I said, "Mr. Drew, how could you sell them to us, as Schine has them bought?" "You told us Schine had bought them."

The Court: That is the year before that Schine bought them, for 1935 and 1936.

[fol. 383] Mr. Wright: This is the 1937-1938 season. She went in in September and had this conversation in which Drew told her the 1937-1938 product had been sold second run to Schine.

The Court: A year ahead?

Mr. Wright: The 1937-1938 season begins in September, 1937, and when she went in at that time she was told by Mr. Drew that the 1937-1938 second run had been sold to Schine. In this conversation at Lima in the spring of 1938 he then told her that part of that product was open to her, 1937-1938 second run.

Mr. McKay: That was not her testimony. She said he asked her if she would be interested in it.

The Court: She testified before the 1936 and 1937 run

had been sold to Schine. Nothing was said about the 1937-1938 run.

Mr. Wright: I think you are mistaken, your Honor. I think her testimony, if you will read it, was that the 1937-1938 had been sold to Schine.

The Court: That isn't right. In the spring of 1938 she saw Drew again and she said, "How can you expect to sell me this when it has already been sold to Schine?"

Mr. Wright: That is right.

[fol. 384] The Court: Schine's contract had run out in September, 1938.

He was talking about 1938-1939, wasn't he?

Mr. Wright: Let us find out.

Q. What season was Mr. Drew talking about when he discussed the Metro product with you at Lima?

A. 1937 and 1938.

Q. What did he tell you about that season's product?

A. He then told me that the product had not been sold to Schine, that Schine had asked him to hold it for them.

The Court: You testified that he said in the the fall of 1937 that it had been sold to Schine.

The Witness: That is what he told me.

Q. What was the rest of the conversation?

A. So that he wanted to know if we would care to have half of the product of 1937 and 1938.

Q. The season was then, I take it, how far along?

A. Nearly over.

Q. Had Schine been playing some of those pictures, or any of them, second run?

Mr. Rogers: One moment. You have not qualified this witness as to knowledge of the facts or the situation, and it is a conclusion.

The Court: Are you able to state——

The Witness: Yes, they played a few pictures second run at their Strand Theatre.

[fol. 385] The Court: Of the Metro?

The Witness: That is right.

Q. The Strand Theatre, that was the theatre they had taken over from Dasher and Mr. Evans?

A. That is right.

Q. Then can you give us the rest of the conversation?

A. He wanted to know then if we would be interested in taking half of the product for 1937 and 1938 and 1938 and 1939, and we told him no.

Q. Did you tell him why?

A. We felt that as we had been their account we were entitled——

The Court: What did you say to him?

Q. Just tell what you said.

A. We wanted all of them.

Q. You told him that you wanted all of the 1937-1938 and 1938-1939 second run?

A. That were available.

Q. What did he say to that?

A. He said he couldn't do that.

Q. Did he tell you why?

A. On account of his agreement with Schine.

Q. Then, Mrs. Moore, did you have any conversations with any representatives of the Schine Company about a sale of the Ohio Theatre?

A. I did.

[fol. 386] Q. Who talked to you about it?

Mr. Rogers: When, please?

Mr. Wright: One question at a time.

A. Mr. Lazarre.

Q. Where did he talk to you?

A. At our home one time.

Q. When was this time you are referring to, what year?

A. 1936.

Q. Do you remember what time in 1936?

A. I think it was in the winter.

Q. Do you remember who was present?

A. Mr. Moore and myself.

Q. This was Mr. Louis Lazarre, the Mr. Lazarre who was there was Mr. Louis Lazarre?

A. That is right.

Q. What was the conversation then?

A. He wanted to know about buying our theatre.

Q. What was said about buying it?

A. He said that they were interested in buying our theatre so that they could raise the admission prices in Van Wert and in this way they could make more money.

Q. Was anything else said?

A. He said it would be the smart thing for us to do to sell out to Schine.

Q. Did he tell you why?

[fol. 387] A. He cited different places where Schine had theatres where they had bought out the opposition.

Q. Can you remember any places where he cited?

A. He cited Mt. Vernon and Wooster and several others.

Q. Do you recall anything else that was said then?

A. He said that we would have difficulty in getting product.

Q. Did he say why?

A. That they would run all the first runs.

Q. What did you or Mr. Moore say?

A. We felt that——

The Court: Not how you felt. What was said?

The Witness: We didn't want to sell unless they could get us a theatre that was better than the one that we had or give Mr. Moore a position.

Q. Was anything further said?

A. He said they might be able to find us a location, as they were in contact with theatres all the time.

Q. Was that all?

A. I guess so.

Mr. Wright: You may cross-examine.

(Short recess taken.)

[fol. 388] Cross-examination.

By Mr. Rogers:

Q. Now, Mrs. Moore, it is my understanding you were very active in the management of the Ohio Theater in Van Wert, is that right?

A. I help with it. I do.

Q. Have you been active in its management from the inception of the operation of the theater?

A. I have.

Q. When you made your deal to take over the Ohio Theater, was it an operating theater or was it closed?

A. It was closed.

Q. And about how long prior to 1934 had it been closed?

A. I can't answer.

Q. Do you know it had been closed for several years prior to that?

A. I don't know.

Q. How many seats did you have in that theater?

A. 347.

Q. Had this been a store that had been converted into a moving picture show?

A. Years ago.

Q. I mean years before you took it?

A. That is right.

[fol. 389] Q. It has been a store that had been converted to a little moving picture show?

A. That is right.

Q. About how wide was that building, the theater itself?

A. About 40 feet.

Q. And about how deep?

A. 120.

Q. At the time you went into the operation of this theater was there any other theater operating in Van Wert?

A. There was.

Q. What theater was that?

A. Strand.

Q. Was that the theater operated by Mr. Evans?

A. It was.

Q. And that theater, the Strand, was playing the first-run product in Van Wert, before you came in there, is that right?

A. Five major companies only.

Q. That was before you came in?

A. Yes.

Q. You say that in the latter part of August or first part of September of 1934, as I recall, you had some talk with some of the companies about product of this Ohio theater, is that right?

A. State that again.

[fol. 390] Mr. Rogers: Let the reporter read it.

(Last question read.)

The Witness: That is right.

Q. What season's product were you discussing with them at that time?

A. 1934 and 1935.

Q. Were those discussions had before you opened the Ohio Theater?

A. That is right.

Q. And with which companies did you have those discussions?

A. United Artists, Columbia, Universal. Shall I name the independents or not?

Q. No. I would just rather have the eight companies. Other than United Artists, Columbia and Universal, did you go to any other of the major companies in 1934 before opening the theater to see if you couldn't get some product for that theater from the other companies like Fox or Metro or R. K. O. or Warner's?

A. No.

Q. You did not?

A. No, we did not.

Q. With reference to Universal product for 1935-1936, first-run, when was it that you decided that you did not care to play those pictures first-run?

A. Mr. Silverman did the deciding for us.

[fol. 391] Q. No, I ask you when did you decide that or wasn't the decision made by you?

A. Mr. Silverman and Mr. Moore and I.

Q. You say decision was made by Mr. Silverman, Mr. Moore and yourself?

A. That is right.

Q. Will you tell me when you made that decision?

A. It must have been in the latter part of August and September of '35.

Q. At that time you had obligated yourself under a written contract with Universal to play those pictures during the season 1935-1936, is that right?

A. That is right.

Q. As a result of coming to that decision, did you then decide to ask Universal to relieve you from that contract, cancel it?

A. Universal asked us.

Q. You testified, Mrs. Moore, that you decided and Mr. Moore decided, Mr. Silverman did not decide you wanted a first-run contract?

A. Universal made this proposition to us, then we acted on it.

Q. Mrs. Moore, when you testified under direct-examination, your testimony was that you decided that you didn't

want the first-run contract, you wanted the second-run [fol. 392] contract, wasn't that your testimony?

Mr. Wright: There isn't any conflict between that and what you said. She said that they made the proposition and she accepted it.

The Court: Let the witness be cross-examined. Did you so testify that in '35 you wanted to take the second-run in place of the first-run? Is that what you said before?

The Witness: Through Mr. Silverman's suggestion.

The Court: What?

The Witness: Through Mr. Silverman's influence we did.

The Court: Through Mr. Silverman's influence you did?

By Mr. Rogers:

Q. Mrs. Moore, that was not your testimony under examination by Mr. Wright, was it?

A. I don't know.

Q. Pardon?

A. I don't know.

Q. You mean you do not remember now what you testified to under direct-examination by Mr. Wright?

A. I think I do.

Q. Do you remember that, that you didn't say anything of the kind to Mr. Wright about Mr. Silverman inducing you to change your mind and change the contract from the first-run to second-run?

[fol. 393] Mr. Wright: Why don't you read the testimony back to her?

The Court: Mr. Silverman changed her mind. Do you recall testifying about that before? About Mr. Silverman caused you to change your mind?

The Witness: Yes.

By Mr. Rogers:

Q. Do you mean you recall you so testified to Mr. Wright that Mr. Silverman caused you to change your mind and change the contract from first-run contract to a second-run contract? Do you mean you recall having so testified?

A. Not in those words, maybe.

Q. Do you mean that you testified to that at all under direct-examination?

A. To that effect.

Q. You say you do remember testifying to that effect, do you?

A. Through his influence we took the second-run deal.

Q. I mean, did you mean you so testified under direct-examination that through Mr. Silverman's influence you changed the contract with Universal from first-run contract to second-run contract? Did you so testify?

A. Through his influences, yes.

Q. You say you so testified under direct-examination by [fol. 394] Mr. Wright, do you mean that?

A. State that again, please.

(Last question read.)

The Court: The question is, whether when Mr. Wright examined you first, you testified that Mr. Silverman caused you to change your mind. Did you so testify?

The Witness: That was right, that was through his influence.

The Court: Not what the fact was, but did you so testify before in answer to Mr. Wright's question? If you don't remember, say so.

The Witness: I did.

The Court: What?

The Witness: I did.

The Court: You did testify?

By Mr. Rogers:

Q. Mrs. Moore, may I ask you a question: You constantly keep looking down. Do you have any notes in your hands?

A. No, this is all I have. Do you want it?

Q. No. Well, no matter how it was brought about, was that contract changed from first-run contract to a second-run contract for the season '35 and '36 with Universal?

A. It was.

[fol. 395] Q. And did you enter into another written contract with Universal to play their product 1935-1936 second-run?

A. We did.

Q. You remember that distinctly, don't you?

A. Yes.

Q. You did not play the product second-run, either, did you?

A. I don't think so.

Q. And, in fact, you are pretty sure you didn't, aren't you?

A. I think so.

Q. In other words, you think you did not play it?

The Court: She has answered it.

Q. Now, you spoke about a talk that you had with Mr. Drew, I believe in Lima, Ohio, with reference to 1937-'38 product of Metro?

A. Yes.

Q. You remember that, don't you?

A. Yes.

Q. But don't you remember at that talk that Mr. Brower—during the course of that talk, is that the one you spoke about where Mr. Drew and Mr. Brower were present?

A. That is right.

Q. And you were discussing second-run 1937-1938?

A. That is right.

[fol. 396] Q. And were you and Mr. Moore both present at that talk?

A. We were.

Q. Do you remember that talk?

A. I do.

Q. Do you remember at that talk when the second-run product for 1937-1938 was offered to you at Loew's, that either you or Mr. Moore said that you had so much product, first-run and second-run at that time, that you couldn't even use it up?

A. I don't remember that.

Q. You don't remember that at all. Do you remember any talk being had at that time as to what the condition of your theater was with reference to products?

A. I do.

Q. Was there any mention made by you or by Mr. Moore about how much first-run product you had at that time unplayed?

A. I don't remember.

Q. You don't remember that. Well, will you say it did happen or it might have happened and you don't remember?

A. I think not.

Q. You think not. Was there anything said about the condition of your unplayed product second-run at that time?

A. I don't remember.

[fol. 397] Q. You don't remember that, either? Is it your recollection that it did not happen, or that it might have happened and you don't remember it?

The Court: Do you recall that?

The Witness: No, I don't.

By Mr. Rogers:

Q. Now, you had had Metro product second-run from the time you started operation of that theater, didn't you?

A. No, we didn't.

Q. Didn't you have 1934 and 1935 second-run?

A. I think we did.

Q. Didn't you have 1936-1937 second-run?

A. Which year now, please.

Q. 1936-1937. And then when it came 1937 and 1938 second-run offered to you, you didn't take it, isn't that right?

A. We didn't have it offered to us.

Q. But didn't you testify that it was offered to you by Mr. Drew?

A. Not 100 per cent contract like we had been buying, just part of the product.

Q. How much of it was offered to you second-run?

A. At that time none.

Q. Which time are you speaking of?

A. In the fall of '37.

[fol. 398] Q. Do you mean it was not offered you at all?

A. That is right.

Q. When was it offered to you?

A. In the winter of '37 or early spring.

Q. And what was definitely offered you at that time?

A. A split.

Q. That is 50 per cent of the product?

A. To be decided by them, Metro-Goldwyn.

Q. You were to split the product with whom, the second-run?

A. Schine.

Q. In other words, Schine was to get part of that product and you would get part of the product, second-run?

A. Yes.

Q. And you refused it, is that right?

A. That is right.

Q. Do you remember when it was that you actually made you- contract to buy the 1935-1936 product second-run from Loew's, that is Metro?

A. I do not.

Q. Did you make it in the latter part of the fall of 1935?

A. Must have been the first part of '36.

Q. As a matter of fact, wasn't it made in March of 1936?

A. It might have been.

Q. With reference to the 1936-1937 contract, do you remember when that contract was made with Loew's for [fol. 399] second-run.

A. No, I don't.

Q. Do you recall it was made after the first of the year of 1937?

A. I don't.

Q. You don't recall at all, do you?

A. No, I don't.

Q. Don't you know you made it in the month of January, 1937?

A. No, I don't.

Q. You don't recall. You knew Mr. Hemmline, didn't you?

A. Yes, sir.

Q. And with which company was he connected?

A. Paramount Pictures.

Q. During the year of 1935 and 1936, you were playing Paramount pictures at the Ohio Theater, weren't you?

A. We were.

Q. And how were you playing them?

A. Second-run.

Q. And in the month of January, 1936, you had a written contract pending for the playing of their pictures, did you not, second-run at the Ohio Theater?

A. We must have had.

Q. Mrs. Moore, will you please look at this paper, and will you tell me whether you recall having received the [fol. 400] original of that letter?

A. May I get my glasses?

Q. Surely. Do you remember receiving that letter, Mrs. Moore?

A. I don't remember it, but then I suppose we did.

Q. You suppose you did?
A. Yes.
Q. But you suppose you did receive that letter?
A. Yes.

Mr. Rogers: I offer it in evidence.

Mr. Wright: I don't understand what the materiality of it is. There is no objection to it as far as you offering the copy instead of the original.

Mr. Rogers: Shall I hand it up to your Honor?

(Thereupon the letter dated January 5th, 1936, addressed to Mrs. Moore, referred to, was received in evidence, and marked as Defendants' Exhibit D-12.)

Mr. Rogers: This is a letter bearing date January 5th, 1936, addressed to Mrs. Moore, Ohio Theater.

Mr. Wright: May I ask what the purpose of the offer is? What it is offered to prove or disprove?

Mr. Rogers: I will develop that with the examination of the witness.

[fol. 401] The Court: You said you had no objection to the offer.

Mr. Wright: I said I objected on the grounds of immateriality. I didn't object to him using a copy instead of the original. She has not given any testimony about Paramount at all. I take it this is some part of his case. If he wants to go into it with her as his witness that is a matter, I suppose, of convenience. Certainly it isn't proper cross-examination in any event.

The Court: Of course, whether it is treated in his own case when he cross-examines, it depends on what is developed later. I think I will receive it at this time. You may examine on it.

By Mr. Rogers:

Q. I wish to read the opening sentence, Mrs. Moore. Will you please listen to it? This is addressed "Dear Mrs. Moore: In checking over your account I find that there are approximately 20 pictures available for booking." Now, as of that date, that was a fact, wasn't it?

A. It must have been.

Q. And there is the statement in this letter: "I know that at the time the deal was made you were very anxious [fol. 402] to secure second-run, and I would appreciate

booking immediately." Isn't it a fact, Mrs. Moore, that the reason why you didn't book in these 20 pictures at that time or hadn't up to that time, was that you had a sufficiency of product and you couldn't use those pictures at that time?

A. That was not the reason.

Q. You say that was not the reason?

A. That is right.

Q. Well, when you made the contract, you intended to live up to the contract, didn't you?

A. We did.

Q. And the date of this letter there were 20 pictures you were supposed to have taken up and hadn't taken up, is that right?

A. That is right.

Q. That was not because you just deliberately did not wish to live up to your contract, was it?

A. State that again, please.

Mr. Rogers: Let the reporter state it.

(Last question read.)

The Witness: No.

Q. These were Paramount pictures, weren't they?

A. Yes.

Q. Paramount pictures at that time were very desirable, [fol. 403] weren't they?

A. Some of them.

Q. Part?

A. Some of them.

Q. Among these 20 they were holding for you were a number of very desirable pictures, were they not?

A. Some of them.

Q. And you didn't take them up at that time, either, had you? (A pause.) Just answer whether you had or not.

A. No.

Q. Now, with reference to the Loew's Metro product, isn't it a fact that you bought and played every year from 1933-1934 through 1939-1940, Metro product at the Ohio Theater?

A. I don't think so.

Q. Which of those seasons is it your recollection you didn't play any Metro pictures?

A. I can't answer that question that way.

Q. What is your difficulty? If you tell me what your difficulty is, I will clarify my question.

A. We might have played some of the pictures during the year that were left over from another season, but it was the season of '37 and '38 that we didn't buy.

Q. Let me put the question to you this way, then: Of the season's product that was released by Metro for each of the [fol. 404] picture seasons 1933-1934 and 1939-1940, didn't you play each of those successive seasons the product at the Ohio Theater?

A. We played '38 and '39, and did you ask me about '40?

Q. I asked you about '38-'39. I asked you about '39-'40.

A. Yes.

Q. And you played 1933-1934, too, didn't you?

A. We might have gone back and picked up some. I don't remember whether we run them all.

Q. My question, Mrs. Moore,—I don't want to mislead you,—my question was not directed to your playing all, but some of every season's product, isn't that true, of Metro?

A. I am not sure about the one year.

Q. Which year is that?

A. '37 and '38.

Q. You are not sure of whether you played any part of the Metro product for the season '37-'38, is that right, other than that you did play the product of every season from the '33-'34 season right through and inclusive of '38 and '39, is that correct?

A. I don't remember.

Q. Which season is it you don't remember?

A. The earlier season.

Q. You mean you don't remember whether you played [fol. 405] any part '33-'34 product?

A. I expect we did, but I don't remember.

Q. How about '34-'35?

A. I expect we did.

Q. How about '35-'36?

A. I don't remember.

Q. You don't remember that at all, do you? And '36-'37?

A. Some pictures.

Q. And '37-'38.

Mr. Boggess: I submit she has answered that, your Honor. She has answered already.

Mr. Rogers: She said she was not sure. I am refreshing her recollection.

Mr. Boggess: She said positively she did not remember.

Mr. Rogers: Trying to jog up her memory a little bit.

The Court: I understood her to say she didn't remember '37-'38.

Q. What is your answer with reference to '37-'38?

A. If we played any, we played them later, not during the season.

Q. How about '38 and '39?

A. Yes.

Q. You did play the others I have covered?

A. (No answer.)

[fol. 406] Q. You testified that Mr. Lazarre called at your home some time in the winter of 1936 to discuss the possibility of purchasing the Ohio Theatre. Is that your recollection?

A. Yes, sir.

Q. And you are sure it was the winter of 1936?

A. Or 1937.

Q. Now, let us see: It was either the winter of 1936 or the winter of 1937, you say. Now, which is your better recollection? Was it in 1936 or was it in 1937?

A. 1937.

Q. 1937 is your best recollection?

A. Yes, sir.

The Court: You said November, 1936, before.

Mr. Rogers: That was her original testimony on direct.

Q. Now, I understand, Mrs. Moore, you would like to change that from the winter of 1936 to the winter of 1937; is that correct? Will you please answer, Mrs. Moore? Is that correct?

A. Yes, sir.

Q. And just where was that conversation had?

A. At our home.

Q. Where was your home at that time?

A. VanWert.

Q. You had your home in VanWert at that time?

[fol. 407] A. That is right.

Q. Was that the first time that there had ever been any talk about your selling the theatre or leasing the theatre to Schine?

A. No.

Q. Had there been a talk prior to that?

A. Yes.

Q. And when was it?

A. I think it was in the late summer of 1935.

Q. And was that meeting brought about through a request on the part of yourself or your husband that an arrangement be made for you to meet with Schines to discuss it?

A. Not at that time, I don't think.

Q. Well, did you have any talk at that time?

A. Small talk.

Q. With whom was the small talk had?

A. At that time Mr. Schine and Mr. Lazarre were both at our theatre in VanWert.

Q. Mr. Schine and Mr. Lazarre were at your theatre in VanWert?

A. That is right.

Q. You say you had a talk with them at that time?

A. Just a small talk.

Q. Did you know Mr. Schine at that time?

A. No, I didn't.

[fol. 408] Q. You never had met him before?

A. I don't think so.

Q. And who was present at that talk?

A. Mr. Moore was there and our manager, Mr. Cummings.

Q. And where was the talk had?

A. In the lobby of the theatre.

Q. It was just an informal, short talk, you say?

A. That is right.

Q. And was that about leasing the theatre or buying the theatre or just to talk about the theatre?

A. About the theatre and buying it and becoming affiliated with them.

Q. It was a talk about becoming affiliated with Schine, wasn't it?

A. That is right.

Q. But when did you really have a talk about that with reference to the possibility of Schine buying the theatre or leasing the theatre?

A. There were several talks.

Q. Well, do you remember when the talk took place after the summer of 1935?

A. In the summer of 1936 we had a talk.

Q. And where was that talk?

A. At our attorney's home in VanWert.

Q. And who was that attorney?

[fol. 409] A. Judge Conn.

Q. You say that was the summer of 1936?

A. I think so, or it might have been 1937; either 1937 or 1936.

Q. And do you recall prior to that talk in the summer of 1936 whether they had been any other talk?

A. There might have been.

Q. Well, do you recall any?

A. No.

Q. Well, do you actually remember having made a deal under which you agreed to sell the theatre to Schines?

A. I remember that we said we would.

Q. What?

A. I do.

Q. You remember you said you would?

A. That is right.

Q. Do you remember having put it in writing?

A. I think I wrote a letter.

Q. You think you wrote a letter?

A. That is right.

Q. Offering the theatre to the Schines?

A. Yes, sir.

Q. At a certain price?

A. I think so.

Q. And do you remember when that was done?

[fol. 410] A. No, I don't.

Q. Do you remember which year that was done?

A. No.

Q. Now I want to show you this paper, Mrs. Moore. Is that in your handwriting or is that in your husband's handwriting (showing letter to witness)?

A. That is mine.

Q. That is your handwriting?

A. Yes.

Q. That purports to be a letter bearing date April 13, 1936, addressed to Schine Enterprises, attention Mr. May, Gloversville, N. Y., signed "Carl B. Moore"?

A. It is.

Q. Is that signature "Carl B. Moore" also in your handwriting?

A. Yes, that is my writing.

Q. In other words, this two-page letter, bearing the date

I just spoke about, and the designation I spoke about, is entirely in your handwriting; isn't it?

A. That is right.

Q. Now I want to show you another paper, Mrs. Moore, and I ask you whether that one-page paper, written on both sides, is in your handwriting?

A. This is mine.

Q. And the writing on both sides in your handwriting? [fol. 411] A. That is right.

Q. And it closes "Sincerely yours, The Moores"; that is all in your handwriting, all of it?

A. That is correct.

Q. That is a letter bearing date April 12, 1936, from Miami, Florida, and addressed to "Dear Bud." Now, who was "Dear Bud"?

A. Mr. Silverman.

Q. In other words, was that sort of a nickname?

A. Yes, sir.

Q. You called him Bud Silverman?

A. That is right.

Q. Now I show you a paper which purports to be a letter bearing date May 12, 1936, and I ask you is that entirely in your handwriting?

A. That is mine.

Q. Including the signature?

A. That is correct.

Q. That is a letter bearing date May 12, 1936, addressed to Mr. Louis Lazarre, Cleveland, Ohio, and signed by Carl B. Moore. Now, on April 13, 1936, the date of this letter addressed to Schine Enterprises, attention Mr. May, did you know Mr. May at that time?

A. I think I must have met him.

Q. Do you know whether or not you met him prior to that [fol. 412] date? When I say "prior to that date" I mean prior to the date of April 13, 1936.

A. I don't recall.

Q. You really don't remember, do you, whether you ever met him prior to that date?

A. What date?

Q. April 13, 1936.

A. Yes, sir, I had met him.

Q. You had met him prior to April, 1936?

A. Yes, sir.

Q. Do you remember where?

A. Yes.
Q. Where was it?
A. Lima.
Q. In Lima, Ohio?
A. That is right.
Q. Do you remember when that was?
A. It was in 1935.
Q. And do you know about when in 1935 that was?
A. In the late summer.

Mr. Rogers: Now I wish to offer that in evidence.

Mr. Wright: I think we ought to know which part of what has been shown to the witness is now being removed.

Mr. Rogers: That was not shown to the witness. The three [fol. 413] letters that were shown to the witness, one letter of April 13, 1936, a letter of April 12, 1936, and a letter of May 12, 1936, the three were in her handwriting. That was all I asked her about.

Mr. Wright: I understood you asked her if she had received another letter, of which you had a copy.

Mr. Rogers: No, indeed.

Mr. Wright: In any event, you don't want to show us the copy?

Mr. Rogers: I didn't show it to you. I didn't say I wouldn't. I just wanted to make it clear that I didn't show it to the witness.

Mr. Wright: You don't want to show it to us; is that right?

The Court: Proceed.

Mr. Rogers: Now I offer these three letters in evidence.

The Court: Why should they not be identified and reserved for your defense?

Mr. Rogers: Because under cross examination I have a right to introduce these letters to show a condition other than that claimed by this witness.

Mr. Wright: What is the condition they purport to show? That is beyond me. What relation this has to anything she testified to on direct examination I confess I can't understand.

The Court: I have not seen them. Received.

[fol. 414] (Thereupon the letter of April 12, 1936, referred to, was marked as Defendant's Exhibit D-13 in evidence.)

(Thereupon the letter of April 13, 1936, referred to, was marked as Defendants' Exhibit D-14 in evidence.)

(Thereupon the letter of May 12, 1936, referred to, was marked as Defendants' Exhibit D-15 in evidence.)

Q. Now I hand you Defendants' Exhibit 15, which is the letter from Mr. Moore to Louis Lazarre which you wrote, and I ask you, did you write that letter after consultation with Mr. Moore, your husband?

A. I did.

Q. And that was done with his knowledge and with his consent, wasn't it?

A. That is right.

Q. Now, after that letter was written was the deal closed?

A. It was not.

Q. And isn't it the fact that after that letter was written accepting the proposition that you went to the Schines and asked them to please let you out of the deal?

A. No, I didn't do that.

Q. You didn't do that?

A. No.

Q. Wasn't that deal cancelled by them on your request that you be relieved from the deal and have the deal go by [fol. 415] the board because you had changed your mind and you wanted to still continue to operate the theatre?

A. At the request of our attorney, Mr. Conn.

Q. Well, did you instruct your attorney, Mr. Conn, to go to the Schines and see if they wouldn't call the deal off because you had changed your mind?

A. They called on him.

Q. You mean the Schines called on Mr. Conn?

A. That is right.

Q. Were you present?

A. I was.

Q. In Mr. Conn's office?

A. At his home.

Q. Do you remember that the purpose of that meeting was to have them consent to call this deal off so that you could continue to operate the theatre?

A. I don't know how to answer that.

Q. You say you don't know how to answer that? Well, at the meeting in Mr. Conn's office, your attorney's office, didn't the Schines say that they came there prepared to close the deal in accordance with this letter, Defendants' Exhibit 15?

A. They did.

Q. In other words, they were there to close the deal, weren't they?

[fol. 416] A. Yes, sir.

Q. And they were there prepared to give you the money called for in that letter, weren't they?

A. I supposed they were.

Q. Wasn't the only reason that the deal didn't go through that you wanted to call the deal off?

A. No, that wasn't the only reason.

Q. You say that wasn't the only reason?

A. No.

Q. What do you claim was the reason the deal was called off when they were prepared to go through and had the money and wanted to close the deal? What was the reason the deal didn't go through, do you claim?

A. They were to give Mr. Moore a position.

Q. I can't hear what you are saying.

A. Mr. Moore was to have a position.

The Court: What?

The Witness: My husband was to work for them.

The Court: Schine, you mean?

The Witness: Yes, sir.

Q. Did that come up for the first time in Mr. Conn's office?

A. No.

Q. Is there anything contained in this letter of yours of May 12th in which you say a condition of the deal was that your husband was to get a position with Schine?

[fol. 417] A. There is nothing there.

Q. So far as this deal is concerned, as set forth in your letter, as contained in your letter, the Schines were prepared to go through with the deal; is that right?

A. With the money value.

Q. In other words, they were prepared to pay the amount of money which you set forth in that letter, weren't they?

A. The money, yes.

Q. And they were willing to turn back to you some of this talking equipment and the pop-corn machine, which you wanted reserved out of the deal; is that right?

A. Yes, sir.

Q. And that is all they were called upon to do under this deal, wasn't it?

A. In that letter.

Q. When was the question of this position raised?

A. At different times.

Q. Was it raised at the time this letter of May 12 was written?

A. In our talks.

Q. You mean in your personal talks among Mr. Moore and yourself?

A. And Mr. Lazarre.

Q. And you say there was some talk about a position that Mr. Moore was to get?

[fol. 418] A. Or to get us another theatre in another town.

Q. Or to get another theatre?

A. For us.

Q. Which do you claim was the reason for your refusing to go on with this deal, the fact that you didn't get another theatre or the fact that Mr. Moore didn't get a position?

A. We would have been satisfied with either of them, another theatre or a position.

Q. And neither one of those contingencies was put in your letter of May 12, the theatre or the position; is that right?

A. That is right.

Q. And you wrote that letter after carefully going over the situation with Mr. Moore, didn't you?

A. I went over it with him, but not our attorney.

Q. I am not talking about your attorney. You went over it with Mr. Moore, didn't you?

A. I did.

Q. Now I show you this letter of April 13, 1936, Defendants' Exhibit 14. Was that letter written by you after carefully talking over the matter with Mr. Moore?

The Court: She said it was written for Mr. Moore.

The Witness: That is right.

Q. And written to Mr. May of the Schine Enterprises?

[fol. 419] A. That is right.

Q. And you talk about his organization taking over the Ohio Theatre, don't you?

A. Yes.

Q. The Ohio Theatre was your theatre?

A. Yes, sir.

Q. Is there a single word mentioned in that letter about any position for Mr. Moore or about them getting you another theatre?

A. There is not.

Q. And that was written before Defendants' Exhibit 15 of May 12, 1936?

Mr. Wright: This is an argument he is perfectly free to make at any time.

The Court: That all appears in the record.

Q. As a matter of fact, prior to the making of that contract——

Mr. Wright: I object to his referring to this as a contract or a deal. It is obviously on its face a letter and Counsel cannot make it anything else.

Q. Prior to the letter of May 12, 1936, Defendant's Exhibit 15, you and Mr. Moore were very anxious to sell the theatre, weren't you?

A. No.

Q. You were not?

[fol. 420] A. No.

Q. You were very anxious to have Mr. Silverman intercede in your behalf to try to get the Schines to make a deal with you, weren't you?

A. No.

Q. You weren't? Well, you recall this language in your letter, don't you, "We have talked it over and we would like to make a deal with Schines some way or other. We feel you are the ones to approach. As you know, we really do business at one little stand. If you can arrange this for us we will deeply appreciate it and will do our part." Now, when you wrote that in that letter to Mr. Silverman did you mean it?

A. In one way I did.

Q. Was that an accurate statement of how you and Mr. Moore felt about disposing of that theatre?

A. With the facts in the case it was.

Q. So that you were anxious to dispose of the theatre, weren't you?

A. Due to the situation of pictures in the town.

Q. Regardless of what the situation was, you were anxious to sell the theatre, weren't you, or get rid of it on some basis?

A. No.

Q. In spite of what you say in this letter; is that right?

[fol. 421] A. It was the conditions that made me write that letter.

Q. Now, Mrs. Moore, this letter of May, 1936, that we have been talking about, covered one proposal to purchase and sell. Was there a subsequent deal made or discussed with Schines about them buying this theatre?

A. Will you read that to me?

Q. This is the letter (handing to witness).

A. You want to know if I wrote——

Q. Let me clarify it. What I mean was, wasn't there another deal discussed and made after the one set forth in that letter of May 12th, about you selling the Ohio Theatre to the Schines?

A. This is the only one I remember.

The Court: He didn't ask you about a letter. Was there any other later discussion about the sale of the theatre to Schines?

The Witness: Yes, we had a meeting, yes.

Q. And that was about how long after May 12, 1936?

A. It mustn't have been very long.

Q. Was it about a year later?

A. I don't think so.

Q. Well, about how much later would you say it was?

A. I said not very long.

Q. Well, now, what happened as a result of those second negotiations?

[fol. 422] A. You mean the meeting at our attorney's home?

Q. Wherever the meeting may have been, Mrs. Moore.

A. After the meeting at our attorney's home Mr. Silverman had contacted us relative to buying the theatre after that.

Q. You mean Mr. Silverman wanted to buy the theatre himself?

A. For the Schines.

Q. Was a deal made?

A. No.

Q. Wasn't the contract actually made and signed by Mr. Moore?

A. No.

Q. You don't remember that? Do you remember going over to Bellefontaine and seeing Mr. Lazarre?

A. I do. I remember being over there.

Q. Do you remember about when that was?

A. That was before this letter.

Q. You say that was before this letter of May 12, 1936?

A. That is right.

[fol. 423] Q. Do you remember going to Bellefontaine to Mr. Lazarre and telling him that you understood that your husband made a contract to sell this theater, and that you wanted him to tear the contract up?

A. I don't remember.

Q. You don't remember that at all?

A. No.

Q. Do you remember him tearing the contract up and saying "If that is the way you feel about it and don't want to make the deal I will tear the contract up?"

A. No.

Q. Is it your recollection that that did not occur, or it might have occurred and you have forgotten it?

A. I don't just remember.

Q. Don't remember it at all. Do you recall how many pictures you contracted for with the various distributor companies for the season 1934-1935 to be played at the Ohio Theater?

A. I know the companies, I believe, but not the number from each company.

Q. In the aggregate, all told, do you remember how many pictures you contracted for, feature pictures, I mean, for the season 1934-1935?

A. The different companies I do. I could look up and find the amount, but I couldn't tell you right now.

[fol. 424] Q. In other words, you won't trust your memory, but you can refer to records, and do you have the records with you?

A. Yes.

Q. Here?

A. Yes.

Q. In the period of 1934-'35, the motion picture season, can you tell me how many feature pictures you actually used in the Ohio Theater and showed there?

A. I cannot without looking it up.

Q. Was it your policy in 1934-'35 a double-feature policy?

A. It was not.

Q. Single-feature?

A. Yes.

Q. And you played shorts?

A. Yes.

Q. And news reels?

A. Yes.

Q. How often a week did you change?

A. Three times.

Q. So that on the average you used about 156 pictures, is that right, during that season?

A. We might have used more, because our policy was three changes, but sometimes we run a picture one day only, like on Saturday.

[fol. 425] Q. So some weeks you might use four pictures you mean?

A. That is right.

Q. And some weeks three pictures?

A. That is right.

Q. During the course of the season you would use up 140, 150 pictures, is that right, or more?

A. I would say 200 or more.

Q. What?

A. 200 or more.

Q. Would you say 200 or more. That would be over four pictures a week, is that right?

A. That is right.

Q. Four features would be 208 pictures, is that right?

A. Yes.

Q. That would be at the rate of playing four pictures every week of the year?

A. Our policy was to run single features, but in the latter part of '35, we did run some double bills and so did Schine's at their theaters.

Q. Those records you have here will show that, will they?

A. That is right.

Q. Will you be so good during the recess hour to look at those records, because I intend to ask you, and look at these various years, and ask you about the number of pictures?

[fol. 426] The Court: We had better give up the idea of four o'clock recess, then, if you are going into that.

Mr. Wright: There is no question about what those records show, and they could be offered at any time, and are the best evidence. If he wants to show what pictures they played, the cutoff records would show, and it would be, it seems to me, a more appropriate subject of documentary evidence.

The Court: We will recess until 2 o'clock.

(Whereupon, at 1:05 o'clock p. m., a recess was taken until 2 o'clock p. m.)

[fol. 427] After Recess, 2 o'clock p. m.

Appearances:

As before noted.

LOTTIE MOORE resumed the stand on behalf of the Plaintiff, and testified further as follows:

Cross-examination (Continued).

By Mr. Rogers:

Q. Now, Mrs. Moore, during the recess, were you able to examine your records about the number of pictures you had contracted for and the number of pictures you had played for the 1933-1934 season product?

A. 1933 and '34, I didn't have that.

Q. With reference to the product for the season 1934-1935, did you have records on that?

A. I don't have that, either. I thought I did, but I haven't.

Q. With reference to the season 1935-1936, did you have records on that?

A. No.

Q. When did your records start, 1936-'37?

A. I have some records, but I have the 1937-'38 year is the first one.

[fol. 428] Q. You have nothing prior to 1937-'38?

A. I have not. I have the United Arti-ts contract, and that is all.

Q. With reference to the season 1937-'38, can you tell me how many feature pictures you contracted for the Ohio Theater?

A. Not the number, no.

Q. You can't give me the number?

A. I can give you the book, but I haven't counted them.

Q. Does the book contain the number?

A. The number of pictures, yes.

Q. Have you the book here?

A. It is out in the hall.

Q. By looking at the book would that serve to refresh your recollection as to the number?

A. No, but you could count them.

Q. Couldn't you do that from your own book?

A. Yes.

Mr. Wright: If the Court please, the witness is not bound to make a computation for counsel. He has the record and he is perfectly at liberty to show the book record. Certainly it isn't proper cross-examination under any view of the thing.

Mr. Rogers: Let us get the record in here and between [fol. 429] the witness and myself see if we can do that.

The Court: If you have the record, why spend time on it?

Mr. Rogers: I haven't the record here. I never have had the record.

Mr. Wright: He has the same thing we have, which is the answer of Columbia to the interrogatories which set forth the rentals in Van Wert during this period of time. All this witness has is a secondary record or date book which she kept for her convenience, which certainly is not the best record, in any event, of the pictures.

The Court: What is the materiality of this, Mr. Rogers?

Mr. Rogers: The materiality, may it please the Court, is to show if we can't show by her testimony the number of pictures they actually contracted for, and have available, and the number played that they did actually play in the theater, and you balance one as against the other, you readily arrive at the conclusion, whether she had plenty of product or had a scarcity of product, or sparsity of product, [fol. 430] as the Government claims. The Government claims they had sparsity of pictures, did not have enough pictures, and could not get enough pictures.

Mr. Wright: There isn't any question about not having enough pictures to play at the house. The only point of her testimony is the fact they were put down to subordinate pictures by having the first-run taken away and they were then a second-run house. We did not offer any testimony to show she could not get the second-run pictures, except in the case of the one season where Metro held them up for Schine. That is what the testimony is. I don't see what he is suggesting here is any rebuttal to what has been offered at all.

Mr. Rogers: May it please the Court, the complaint goes beyond that, far beyond that.

Mr. Wright: The direct-examination did not go beyond that. As part of your case you can make a showing of what was played there through the records.

Mr. Rogers: I don't know what further testimony you are going to adduce on that subject. You charge that in your complaint and you charge in your bill of particulars what [fol. 431] the situation was, that we drove them out of business and they couldn't get any products.

Mr. Wright: Didn't drive them out of business. They are in business.

The Court: The cross-examination seeks to show what material she had and was made available.

Mr. Rogers: The testimony here on the part of this witness, even as to second-run product, she was having difficulty getting second-run product. I am going into that second-run product.

The Court: You had better call another witness and let her step aside and get her records. If you want to get away from here today, you will have to make some haste.

Mr. Rogers: If Mrs. Moore will be so kind to step aside and get the records on that second-run situation.

The Court: She had better retire.

[fol. 432] CARL B. MOORE, a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live?

A. Van Wert, Ohio.

Q. You are the husband of the Mrs. Moore who just finished testifying here?

A. That is right.

Q. You own the Ohio Theater at Van Wert?

A. That is right.

Q. Have been operating it since the fall of 1934?

A. That is right.

Q. Do you recall that another theater was started there in the spring of 1935?

A. Yes.

Q. What was the name of it?

A. Schine's Van Wert Theater.

Q. When was that theater opened?

A. I think that was some time in August of 1935.

Q. That was just prior to the time that Schine also took [fol. 433] over the operation of Mr. Dasher's Lyric Theater?

A. I think that is right, yes.

Q. Can you tell us what the admission prices charged by the various theaters there were?

The Court: At what time?

Q. At the time the three theaters were operating in 1935?

A. Well, I think our prices at the Ohio Theater were 10 and 15 cents.

Q. Your prices were 10 and 15 cents?

A. I think so.

[fol. 434] Q. Well, what do you mean, ten for what and fifteen for what?

A. Ten for children and fifteen for adults.

Q. What was the Lyric charging?

A. The Strand?

Q. Or the Strand. I beg your pardon.

A. Ten and twenty cents.

Q. And the Schine Van Wert theatre?

A. It had a sliding scale, as I remember. I think their top price for adults was 35 cents.

Q. And do you recall if there were any changes in admission prices during the next three or four years?

A. Yes, sir.

Q. What were the changes?

A. The price of Schine's Van Wert was dropped to 25 cents. That was the top price.

Q. How about the Lyric Theatre—was it, that they took over?

A. The Strand Theatre.

Q. The Strand.

A. They dropped the price there too later. I don't know just what it was.

Q. Do you remember what figure?

A. Ten and fifteen cents. Ten cents for children.

Mr. Rogers: May we get the date when it is claimed the drop occurred?

[fol. 435] Q. Will you give the approximate time, Mr. Moore?

A. Well, I remember these things happening but I don't know the exact dates that they were changed.

Q. Well, can you give the approximate year?

A. Yes, in the year of 1935.

Q. Some time in 1935?

A. Yes, sir.

The Court: You mean they both dropped during that year?

The Witness: It may have been as late as 1936. I might have been mistaken on that.

Q. 1935 or 1936?

A. 1935 or 1936.

Mr. Rogers: Is that with reference to one or both?

The Witness: Both.

Q. Then that was the first time that you saw Mr. Schine?

A. Well, I think it was some time before the Schines opened there in VanWert and Mr. Schine was in town. It was some time before Schine's Van WertTheatre was opened. Mr. Schine was in VanWert.

Mr. Rogers: Pardon me. Can't we get that fixed approximately by month and year?

The Witness: Yes, in the year of 1935, in the summer.

Q. He came to see you at your theatre?

A. Yes, he visited my theatre there one day and looked over my theatre and asked me about my investment, and so [fol. 436] forth. I told him, and he said well, if I ever wanted to sell, or anything of that sort, it hadn't ought to be hard for us to get together.

Q. You are acquainted with Mr. Bud Silverman, aren't you?

A. Yes, sir.

Q. After he went to work for the Schine Company did you continue to see him?

A. Yes, sir.

Q. About how often?

A. He was in VanWert, I would say, at least once a month.

Q. That is during what period?

A. 1936.

Q. Well, for how long after that?

A. I just don't remember how long Mr. Silverman worked for—it must have been up to about 1940.

Q. That he was in that area, you mean?

A. Yes, sir.

Q. There was about four years there when he was making regular trips to VanWert?

A. Yes, sir.

Q. You say about once a month?

A. I suppose—I would say once a month at least.

Q. When he saw you what conversation did you have with him? What did you talk about?

A. Well, most every time I would see him he would ask [fol. 437] me if I had made up my mind to sell the theatre or what I was going to do about the theatre, and I invariably would tell him that unless I could get something better or equally as good I would just as leave stay where I was at, and that is about the gist of our talk.

Q. Did he offer you any advice as to what you ought to do?

Mr. Rogers: May it please the Court, I object to that.

The Court: Let him state the conversation.

A. Well, yes, on numerous occasions I talked to Mr. Silverman. I remember one time in particular.

Q. What time was this?

A. That was over at my home in 1937 and——

Mr. Rogers: Can we get that fixed approximately by month?

Q. Can you give us the month or the season of the year?

A. That was in the spring, I think it was.

Q. What was the conversation then?

A. Well, Mr. Silverman came in as a friendly adviser and told me if I knew what was good for me——

Mr. Rogers: Pardon me. I object to the testimony of this witness that Mr. Silverman came in there as he says merely as a friendly adviser.

Q. Just confine yourself to what he said and what you said. That is, what the conversation was.

A. Well, Mr. Silverman told me that Schines would buy my theatre and that I knew that Schines were tough and [fol. 438] product would be hard to get, and that if I didn't sell I would probably find myself short of product, and the

best thing I could do would be to sell out and salvage what I could out of my proposition.

Q. What did you say?

A. I told him that I wasn't interested at that time.

Q. That was in 1937?

A. I think it was, yes, sir.

Q. Then you say you continued to see him about once a month for the next two or three years?

A. Yes, sir.

Q. Did he again talk to you about selling the theatre to Schine?

A. Yes, when he would come into VanWert he would stop in to see me, maybe at my theatre or down home, and ask me if I had made up my mind to sell or not, and I would say, "Well, Bud, whenever we can get another theatre as good as the one I have or we can work something out satisfactory I would be willing to make a deal."

Q. Coming down to the time in 1940 can you tell us what the admission prices were at your theatre and the two Schine theatres?

A. Yes. In 1940 they were ten and fifteen——

Mr. Rogers: I assumed the question was directed to the year 1937, was it not?

[fol. 439] The Court: No, 1940.

Mr. Rogers: They both dropped their voice and I did not understand.

The Court: You said ten and fifteen. That was your price?

The Witness: Yes, sir.

Q. What were their prices?

A. At the VanWert it was 25 and 10, I think.

Q. And at the Strand?

A. They were 10 and 15 at the Strand.

Q. Mr. Moore, at the time your theatre had first run product do you recall what your admission prices were then?

A. Yes, we used to charge 10 and 25 cents.

Q. When you had first run Columbia, Universal, United Artists?

A. That is right.

Q. Then you dropped to 10 and 15 when you went on a second run policy?

A. That is right.

Q. Are you familiar, Mr. Moore, with what the prices charged by the Schine theatres in nearby towns were where there were no competing theatres?

Mr. Rogers: May it please the Court, I object to that.

The Court: Sustained.

Mr. Wright: We can prove that by other testimony.

Q. Mr. Moore, do you have any personal knowledge of the efforts, if any, made by the Schine Company to lease [fol. 440] your theatre or buy it?

A. Well, yes, as I have already said about Mr. Silverman.

Q. As I understand it, you don't own the Ohio Theatre in fee; is that right?

A. I don't own the building, no.

Q. You lease the building?

A. Yes, sir.

Q. What is the name of your landlord?

A. Mr. Harry Rumpf.

Q. What I was referring to was any efforts that may have been made by the Schines to make a lease for your theatre with Mr. Rumpf, or buy the building from him. Do you have any knowledge of what was or what was not done in that connection?

Mr. Rogers: May it please the Court, I object to that on the ground that that possibly could not be within the knowledge of this witness and would be hearsay unless he was present when the negotiations were had with Rumpf, or participated in them.

Mr. Wright: Mr. Rumpf has been subpoenaed but he happens to be ill and it is simply a question of either taking his deposition or having this witness's testimony.

Mr. Rogers: That is a new rule of evidence.

[fol. 441] The Court: He cannot testify to something he does not know anything about. If he participated in any such conversation he can testify to that. Were you present at any negotiation or conversation in that regard?

A. I was not present at any negotiations, no sir.

Q. All you know about it is what Mr. Rumpf told you?

A. What Mr. Rumpf, my landlord, told me.

Q. Is Mr. Rumpf ill at the present time?

A. He was the last time I saw him.

Mr. Rogers: May it please the Court, that is immaterial.
The Court: I will let it stand.
Mr. Wright: I think that is all.

Cross-examination.

By Mr. Rogers:

Q. Now, when you first opened the Ohio Theatre what scale of prices for admission were you charging on Sunday, Monday, Tuesday and Wednesday of the week?

A. 10 and 25 cents.

Q. And what prices were you charging at that time for Thursday, Friday—or Wednesday, Thursday, Friday and Saturday?

A. Well, 10 and 25, with the exception of a kiddies' matinee for 5 cents on Saturday.

[fol. 442] Q. Why, as a matter of fact, during that period weren't you charging 10 and 15 cents on the days I have mentioned?

A. When I first opened the Ohio Theatre?

Q. Yes. Now, then, I understand that from October, 1934, through to January 1, 1935, you were charging children ten cents, adults fifteen cents, matinee?

A. To my recollection—we were playing first run pictures there and I thought we were charging 10 and 25 all the time.

Q. Do you mean during the matinees too you charged 10 and 25? Didn't you charge 10 and 15 for the matinee and 10 and 25 cents in the evenings?

A. Yes, I think that is right.

Q. Then you changed your policy on January 2nd, 1935, didn't you?

A. We changed the policy somewhere along there. That is possibly right.

Q. And at Saturday matinees you were charging 5 cents for children and 10 cents for adults; isn't that right?

A. That is right.

Q. During that period you had first run product, didn't you?

A. Yes, sir.

[fol. 443] Q. And you were charging at the time Sunday matinees children under 12, 5 cents, children 12 to 16, 10 cents, adults 15 cents, isn't that right?

A. Yes, sir.

Q. And at that time, so far as your evenings were concerned, your scale of prices Sunday, Monday, Tuesday and Wednesday, when pictures were played, you were charging 15 and 25 cents, 15 for children and 25 cents for adults in the evenings?

A. Yes.

Q. And at that time didn't you also with reference to evening performances, when you played Thursday, Friday and Saturday or Wednesday, Thursday, Friday and Saturday, depending upon your policy, you were charging 10 cents for children and 15 cents for adults, isn't that right?

A. Well, there was a time when we changed our policy to that. I just don't recall what time that was.

Q. Was that shortly after the first of the year 1935?

A. I imagine it was.

Q. Do you remember that in April of 1935, you again changed your policy?

The Court: By change of policy you mean change of price?

Mr. Roggers: Yes.

[fol. 444] The Witness: Was that when I changed to 10 and 15 all the time?

Q. Well, at that time didn't you change your prices, matinee Saturday and Sunday, children 5 cents and adults 10 cents?

A. I don't recall it, no.

Q. Don't you recall that?

A. No.

Q. Don't you recall about April 3rd, 1935, you changed your straight evening policy to 10 cents for children and 15 cents for adults?

A. Yes, that sounds right.

Q. And at that time Schine had not opened his Van Wert theater yet, had he?

A. No.

Q. As a matter of fact, in April, 1935, Schine didn't have any theater in Van Wert, did he?

A. I don't think he did.

Q. You know he didn't?

A. No, he didn't have.

Q. There has been some testimony about Mr. Silverman, who was known as "Bud" Silverman and that he performed

certain work for you in connection with your Ohio Theater in Van Wert. Now, was he employed full time or *or* did he just devote part of his time to that?

[fol. 445] A. Just part of his time.

Q. Was he on a salary basis with you?

A. Yes.

Q. You paid him so much a week?

A. Yes, sir.

Q. Where did Mr. Silverman reside when he was associated with you?

A. Tiffin, Ohio.

Q. During all the period he was working for you?

A. I think so.

Q. Now, I show you Defendants' Exhibit 15, which is letter May 12th, 1936, about which Mrs. Moore testified. Do you remember that letter having been prepared by Mrs. Moore?

A. Yes, I do.

Q. And did she discuss that with you when it was written?

A. Yes, she did.

Q. Did you see it after it was written?

A. I couldn't say as to that, but I know she discussed this letter and I remember it.

Q. You remember reading the letter before it was signed, don't you?

A. Yes, I think I do.

Q. After this letter of May 12th, Defendants' Exhibit 15, do you remember another letter or another writing being [fol. 446] made under which you offered to sell the theater to Schine or accepted a proposition of Schine?

A. I don't remember any, no.

Q. Do you mean you don't remember any proposal of sale, or lease of the Ohio Theater to Schine in your behalf other than this Defendants' Exhibit 15?

A. You mean in a letter?

Q. In any piece of paper, letter or otherwise?

A. Any piece of paper? No.

Q. Don't you remember that after Defendants' Exhibit 15 was entered into you made another deal with Mr. Lazarre to sell that Ohio leasehold to Schine?

A. No.

Q. Don't you remember that at all?

A. No, sir.

Q. Do you remember at any time after April 12th, 1936, which is the date of Defendants' Exhibit 13, or after May 12th, 1936, Defendants' Exhibit 15, having had a talk with Mrs. Moore, your wife, and she having objected to a deal you had made for the sale of the Ohio Theater to the time of this one, Defendants' Exhibit 15?

A. You say a deal that I made? I don't quite understand what you mean by that.

Q. You don't remember, do you?

A. No, sir.

[fol. 447] Q. Mr. Moore, do you recognize the handwriting on that letter?

A. Yes, I do.

Q. Whose handwriting is it?

A. Mrs. Moore's.

Q. Your wife's handwriting?

A. Yes.

Mr. Rogers: I offer this letter in evidence.

Mr. Wright: If the Court please, I don't know what the materiality of the letter is, otherwise we have no objection.

Mr. Rogers: Do you have any objection, Mr. Wright?

Mr. Wright: On the ground it is immaterial, yes.

The Court: Who is this Sam Lichter, who is he? He is with Fox Film?

Mr. Rogers: Yes, sir.

The Court: Received.

(Thereupon the letter referred to, dated June 1st, 1936, was received in evidence and marked as Defendants' Exhibit D-16.)

Q. After this letter of May 12th, 1936, Defendants' Exhibit D-15, do you remember a meeting being had at Mr. Conn's office, your lawyer, to close that deal?

A. Yes, I do.

[fol. 448] Q. And about how long was it after May 12th of 1936 that that meeting was had?

A. Shortly after, a week or two, I should say.

Q. Do you remember who was present at that meeting in Mr. Conn's office?

A. I think Mr. Lazarre and Mr. May.

Q. And Mrs. Moore and yourself?

A. Yes.

Q. And Mr. Conn?

A. And Mr. Conn.

Q. Now, I understand that deal broke up that day in Mr. Conn's office, is that right?

A. Yes.

Q. Was that deal broken up because you demanded a job and a salary with Schine's?

A. Yes.

Q. Was there any talk about what kind of job you wanted, did you say what kind of a job you wanted with Schine's?

A. Well, my lawyer did my talking there for me, and he told Mr. Lazarre and Mr. May that I was his client and that he was a big man there in this town, and so forth, and he wasn't going to see me be thrown out for $5,000 and a theater, and he said that I should have a job with the Company, or more money than what we offered to sell for.

[fol. 449] Q. Well, did Mr. Conn do all the talking or did you do some of the talking?

A. Mr. Conn did most of the talking.

Q. Did you do some of the talking too?

A. No, not very much.

Q. Well, you did some of the talking, although not very much?

A. Yes, sir.

Q. Did you tell anybody, or did Mr. Conn tell anybody, how much a year or how much a week or how much a month you demanded as your salary?

A. I have forgotten. There was something stipulated there, but I have forgotten just what it was.

Q. You mean there was some mention made of it?

A. I think there was, yes.

Q. Was that mention made by you or by Mr. Conn?

A. By Mr. Conn.

Q. Wasn't that figure approximately $5,000 a year to be paid to you?

A. I think that is right.

Q. And for how many years?

A. Five years, I believe.

Q. In other words, your position was that unless you got a contract that would give an aggregate of $25,000 over a period of five years you wouldn't make the deal; is [fol. 450] that right?

A. That is right.

Q. And your lawyer took that position too? You had instructed your lawyer prior to the meeting to take that position, hadn't you?

A. Well, I wouldn't say that exactly.

Q. You had spoken it over with Mr. Conn before Mr. May and Mr. Lazarre arrived, hadn't you?

A. Yes, I talked to Mr. Conn.

Q. And you had all agreed, hadn't you, that Mr. Conn was to make that demand, hadn't you?

A. Well, he advised me before they came in that $5,000 was not enough, and I didn't know exactly what price he was going to set on this.

Q. You mean that you were going to place a different price than the price you had agreed upon; is that it?

A. No, for the working interest or the salary.

Q. I am talking about the price of the $5,000 that you had set in this letter, Defendants' Exhibit 15. You wanted to change that; you wanted to get more money than that; is that right?

A. No.

Q. In other words, you wanted that to stay, but you wanted $25,000 on top of that in the way of salary; is that it?

A. That is right.

[fol. 451] Q. And you talked that over with Mr. Conn and you all decided that that was what he was going to demand; is that right? Now, is that right?

A. I don't remember whether we had that thoroughly threshed out before this meeting or not.

Q. But when you were present at this time and Mr. Conn made that demand you agreed with him that that demand should stand or there would be no deal; isn't that right?

A. That is right.

The Court: Why did you not say something about it in the letter you wrote? Why was not something said about that in this letter?

The Witness: Well, I don't know why that was not mentioned at that time.

Q. I show you this paper and ask you if you recall receiving the original of that letter? Do you?

A. No, sir, I don't. The reason for that is because my wife takes care of the correspondence and probably I never saw the letter. I don't remember the letter.

Q. Well, Mrs. Moore is still on the stand.

The Court: She can be called.

Q. You know nothing about this, is that so?
A. No, I don't know anything about it.

Mr. Rogers: Then I will present that to Mrs. Moore.

Q. Now, let me show you this letter and ask you whether [fol. 452] you ever recall receiving the original of that letter (handing letter to witness)?
A. I didn't have anything to do with that.
Q. In other words, your answer is the same, that Mrs. Moore handled all these details?
A. Yes, sir.
Q. When it came she would look at it and examine it and you wouldn't?
A. That is right.

Mr. Rogers: That is all.
Mr. Wright: That is all.

Lottie Moore resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination (resumed).

By Mr. Rogers:

Q. Mrs. Moore, I show you this paper purporting to be a copy of a letter bearing date April 21, 1939, 20th Century-Fox Film Corporation, I. J. Schmertz, Branch Manager, addressed to Mr. Carl B. Moore, Ohio Theatre, VanWert, Ohio. Do you recall having received the original of that? [fol. 453] A. I don't just recall but I suppose I read it.

Mr. Rogers: I offer it in evidence.
Mr. Wright: It certainly is not proper cross-examination, your Honor, and I do not see that it is material or relevant to anything that has been offered by this witness in the way of proof. There are a number of other lawsuits we could try here. We could try out the question of whether or not there had been an agreement to purchase this theatre. I suppose we might try out the question of whether certain contracts made with distributors had been performed or

not, but I do not suppose that that is what we are here for. As I understand it the issues here are confined to what happened when Mrs. Moore and Mr. Moore attempted to get the first run pictures that they couldn't get because they were sold away from them.

The Court: Mark it for identification. I will exclude it at this time.

Mr. Rogers: My point is, may it please the Court——

The Court: I think that should be introduced in your own case in contradiction of the witness.

Mr. Rogers: Except that under D-16 the witness asked [fol. 454] this Company to give a product——

Mr. Wright: You cannot prove, of course, performance of a contract by a letter from Fox. If he wants to do that he can put somebody from the Fox Company on the stand.

Mr. Rogers: I am not attempting to prove non-performance of the contract. I am trying to prove that these people had plenty of product made available to them and when they did they would not play it. That is the purpose of this.

The Court: Let her testify to what product they had. I think it is part of your case. Mark it for identification.

(Thereupon the carbon copy of letter of April 21, 1939, referred to, was marked as Defendants' Exhibit D-17 for identification.)

Q. I ask you to please look at this, which purports to be the copy of a letter bearing the date of April 4, 1939, written by Mr. Schmertz, Branch Manager, 20th Century-Fox Film Corporation, addressed to Mr. Carl B. Moore, Ohio Theatre, VanWert, Ohio, and I ask you, do you remember having received that letter and having read it?

A. I expect I read that.

Mr. Rogers: I offer it in evidence.

[fol. 455] Mr. Wright: The same objection.

The Court: It may be marked for identification. I think that is more properly a part of your case, Mr. Rogers.

Mr. Rogers: Kindly mark it for identification.

(Thereupon the carbon copy of letter of April 4, 1939, referred to, was marked as Defendants' Exhibit D-18 for identification.)

The Court: You said you received that letter?

The Witness: I think so.

Q. Now, then, Defendants' Exhibit 16, this letter of June 1, 1936, which Mr. Moore when he was on the stand identified as being in your handwriting, there is a statement here saying: "I turn them away by the score." Now, was that an accurate statement when you put that in that letter?

A. I don't know what the letter is.

Q. Well, please take a look at it (handing letter to witness).

The Court: The question simply is whether that is a statement of fact about that you were turning them away by the score.

A. We did turn them away.

Q. You also said in that letter: "Metro and U. A."—and of course you meant United Artists by that, didn't you?

A. That is right.

[fol. 456] Q. —"have given me second runs on which I am doing nicely. Now, why can't you do the same?" Now, was it true that Metro, United Artists, had given you second runs and you were doing very nicely with them?

A. Nice for second run deals.

Q. You mean you were doing nicely for second run deals?

A. Yes, sir.

Q. You mean you weren't doing nicely with them?

A. Just as second run deals; not what we would have done on first run.

Q. You did as well with them as you would have done on second runs, but not as well as you would have done if you had had first runs; is that your distinction?

A. We were doing nicely as a second run deal, but that was not the policy of our house.

Q. Regardless of that I want to know whether you were doing nicely with those pictures, taking into consideration that they were second run pictures; is that right?

A. Is that what I said?

Q. Is that what you claim? You don't say it in the letter. You just say you were doing nicely; you don't qualify it at all.

A. Well, that is what we were doing.

Q. Doing nicely, is that it?

[fol. 457] A. As a second run.

Q. When you say now, "Why can't you do the same?", by that you meant couldn't he also give you second run 20th

Century-Fox, didn't you? This Mr. Sam Lichter was Fox, wasn't he?

A. That is right.

Q. And after that letter they did give you second run Fox, didn't they?

A. Some time after that, yes.

Q. And was it after they gave you that Fox second run that you received this letter, Defendants' Exhibit 17 for identification?

The Court: I would not spend much time on that. It shows, does it not?

Mr. Rogers: It does not necessarily. I want to know if she knows.

Q. With reference to this Defendants' Exhibit 17 for identification, did you write any answering letter to that?

A. I don't remember.

[fol. 458] Q. With reference to Defendants' Exhibit 18 for identification, did you write any answering letter to that?

A. I don't remember.

Q. Are you able to assist us on the question of the product, the number of pictures contracted for and the number of pictures played about which you were interrogated before?

A. Nothing other than the names of them and here is the book, 1937-'38 that I mentioned before, and that is the only book I have.

Q. I don't wish to pry into that book, but I would appreciate if you would show me in that book the pictures that were contracted for during that season and the pictures that were played.

The Court: The number.

Mr. Rogers:

Q. The number.

A. You can't do that from this book. It shows the pictures, your Honor, I would run from Republic or a Company with which I do not have a contract which tells me how many I bought, from which those pictures were run, so I can't give him the information he wants.

The Court: How many you bought?

A. I might have bought 40, but maybe in this book I would only run 30 of them. It might be carried over into [fol. 459] another year.

The Court: That is the ones contracted for.

Mr. Rogers: No, on the contrary, this is the number of pictures played but not the ones contracted for.

The Court: How many are there?

The Witness: I didn't count them.

Mr. Rogers: Can you look at it now and from that book give us an idea of the number of pictures you actually played during that year?

The Witness: No. I couldn't do that from 1937 to 1938, because the book doesn't start the first of the year.

The Court: Doesn't what?

The Witness: Doesn't start on the first of the year, this date book.

The Court: What time does it cover?

The Witness: The first picture in here is August 7th, 1937.

The Court: That run until September, 1938?

The Witness: This book runs until October 1st, 1938.

The Court: From August, '37, about a year and three months?

Mr. Rogers: Yes, about a year and three months.

Q. That period from August, 1937, to October, 1938, shows how many pictures you played?

[fol. 460] A. No, not exactly.

The Court: Approximately how many?

The Witness: I would have to have some help on that. Do you want to help me count them?

Q. Tell me when you start. August 7th.

The Court: It would save a lot of time if you would have somebody else make this computation and call another witness.

Mr. Rogers:

Q. Mrs. Moore, I think if you would be so good as to leave the stand and let either Mr. Homans or somebody else help you.

The Court: You can step down.

(Witness leaves the stand.)

The Court: Next witness.

JEROME G. STEEL a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wright:

Q. Where do you live, Mr. Steel?

A. Oberlin, Ohio.

[fol. 461] Q. What is your occupation?

A. Manager and owner of the Apollo Theater.

Q. Where you formerly engaged in the theatre business at Norwalk, Ohio?

A. I was.

Q. When was that?

A. 1934, December until July, 1935.

Q. With what theater were you connected?

A. The Forum Theater.

Q. With whom were you associated in that enterprise?

A. The two Selman Brothers.

Q. What were their names?

A. William K. and the other was Dr. Dave Selman.

Q. Was there another theater operating there when you came into the town?

A. There was.

Mr. Rogers: Pardon me, one moment. May it please the Court, I object on the ground it is not material, not competent and not even within the issues pleaded. There is no allegation in either the complaint or bill of particulars with reference to any conduct as against Mr. Steel or any restraint practiced on Mr. Steel or any product having been taken from Mr. Steel. On the contrary, the complaint and [fol. 462] the bill of particulars alleges specifically with reference to Norwalk, the only complaints are against the Moose Theater.

Mr. Wright: It is simply to lay the foundation for the testimony that will follow from Mr. Felder, the operator of the Moose.

The Court: Is counsel right in his statement that the Forum Theater is not mentioned in the bill of particulars?

Mr. Wright: I am not sure about the Forum Theater, but the town Norwalk, Ohio, is mentioned. I would be glad to outline the proof we propose to offer through this witness.

The Town of Norwalk was the one where the Moose was the theater operating at the time Mr. Steel came in there, and the Moose was operated by Mr. Felder, who will be a witness here and whose product was taken away. Mr. Steel opened this theater in Norwalk at the time I believe in 1934, and then sold out to Schine in July, 1935. We will also offer testimony on his part that in attempting to secure R.K.O. product for the 1935-'36 season, that was the season [fol. 463] after going in there, he was told by the R.K.O. Manager that they had an old customer in Norwalk, the Moose, and they would not sell him the R.K.O. product for this theater which he opened.

Q. What was the name of it, Mr. Steel?

A. The Forum.

Mr. Wright: The Forum. The Schine bought the Forum and proceeded to buy the R.K.O. away from the Moose Theater without the Moose having been given any opportunity whatsoever to negotiate for a continuance of its R.K.O. first-run. I simply want to show by him that the——

Mr. Rogers: All that may be very interesting, may it please the Court, not a word of it in the complaint, not a word of it in the bill of particulars.

The Court: I will let him show the sale to Schine.

Mr. Rogers: May it please the Court, Schine was not even in the town at the time.

The Court: Schine bought the Forum.

Mr. Rogers: After all this happened. Schine was not even in the town when Steel had his interest in this Forum Theater. Schine did not even operate in the town.

[fol. 464] The Court: I will let him show when he sold it to Schine.

Mr. Rogers: If that is going to limit the proof, that is all right.

Mr. Wright: I want to show in addition to that when he tried to buy R.K.O. product away from the old customer, the Moose, they applied the old customer theory and refused to deal with it. However, the minute Schine acquired his, Steel's theater, then the product was sold away from the old customer without the old customer, the Moose, being given any opportunity to negotiate for it. His testimony is necessary to lay the foundation for that sell-away that occurred in respect to the Moose, and R.K.O. product.

Mr. Rogers: May it please the Court, Mr. Wright is persistent. I admire his persistence, but he may not go outside his pleadings, or his bill of particulars, however interesting it may be. There is no allegation of that kind. We are not put on notice of that which we are entitled to.

Mr. Wright: He was given notice Mr. Steel would appear as a witness a week ago.

Mr. Rogers: I am not a crystal gazer. I don't know what [fol. 465] Mr. Steel is going to testify to.

Mr. Wright: You know now.

Mr. Rogers: Or what you are going to proceed on outside of the pleadings.

The Court: This testimony is in reference to what transpired in reference to the pictures for some particular theater. I think it is competent.

Mr. Rogers: May it please the Court, this is a situation that occurred before Schine ever came into the town, and I wish to be a little bit persistent now as well, your Honor. I do persist along the line that Mr. Wright has no right without any notice of any kind to depart from his pleadings, and depart from his bill of particulars. We were very careful to have him state in his bill of particulars the issues we have to meet here. This issue was not presented to us. It is improper.

The Court: It is a question whether this issue is relevant to the issues themselves. I think it is.

Mr. Rogers: We asked him to define it in his bill of particulars, and he has not defined it in his bill of particulars. [fol. 466] The Court: It does not make a separate issue. It is a matter of proof, that is all. It relates to issues that are alleged.

Mr. Rogers: It does raise a new issue, may it please the Court,—if I may say so, from my knowledge of the cases of this kind, my knowledge of the industry, if he is now creating as an issue the fact that when Mr. Steel was con-

nected with this theater he was barred from getting certain product by these distributors and that as part of this conspiracy that he is speaking about that he hopes to prove some day, these distributors or one of them refused to deal with him, but at a later date, when Mr. Schine's outfit claimed an interest in this theater—he did not obtain the theater, he obtained an interest in the theater—that the same company did, as part of a combination or conspiracy, turn around and sell the product to Mr. Schine, that is a vital issue and that issue is not presented to us by either pleading or bill of particulars, so it is a real issue.

The Court: Standing alone there may not be much relevancy to it, but I think it is a substantial part of the case. [fol. 467] Objection overruled. Proceed.

Mr. Wright: Will you read the last question?

(Last question and answer read.)

By Mr. Wright:

Q. That was the Moose Theater operated by Mr. Felder?

A. Yes.

Q. Do you know if the Moose Theater was then playing R.K.O. pictures first-run?

A. Yes, sir.

Q. What if any efforts did you make after you opened your Forum Theater to secure R.K.O. product?

A. I made numerous trips in to see the R.K.O. Branch Manager, Mr. Greenblatt.

Q. Where, at Cleveland?

A. Cleveland, Ohio, and Mr. Greenblatt stated——

Mr. Rogers: Hold on. Let us get the time and place.

Q. When was the first time you went in to see him?

A. In April.

Mr. Rogers: What year?

Q. 1935?

A. 1935.

Q. And what was said then?

A. He advised me that the Moose Theater had been their customer for years, the past 12 years, and regardless of [fol. 468] how many theaters I had, they were going to stick with the Moose Theater.

Mr. Rogers: May it please the Court, I move to strike that on the ground that there has been no evidence introduced sufficient to qualify Mr. Greenblatt at all as our authority to make statements of policy binding the R.K.O. Company.

The Court: In connection with his other testimony it is to be connected up.

Mr. Rogers: Then it is subject to connection, is it, your Honor?

The Court: Yes, certainly. I don't think that the statements of an agent in the field somewheres, whatever the character shown, is binding on the principal unless the principal permitted it to be made. Go ahead.

Mr. Wright: Will you read the last answer?

(Last answer read.)

Q. Did you make any further efforts to get the R.K.O. product for the 1935-'36 season?

A. I made repeated efforts figuring that the film company——

Mr. Rogers: I move to strike that out.

The Court: Yes.

The Witness: I made repeated efforts.

[fol. 469] Q. That consisted of conversations with Mr. Greenblatt?

A. Yes, sir.

Mr. Rogers: May we get the dates?

Q. Do you remember approximately when the next time was you went there or how often you went in?

A. June and July.

Q. June and July, 1935?

A. First part of July, that is right, shortly before I sold it.

Q. When was it you and Mr. Selman, or the Selman Brothers sold out to Schine?

A. July 24th, 1935.

Q. The last time you went in was in July?

A. That is right.

Q. What did Mr. Greenblatt tell you then?

A. The same story.

Q. Then after Schine took over your Forum Theater in 1935, then did Mr. Selman go with the Schine Company?

Mr. Rogers: Pardon me. There is no evidence here that Mr. Schine took over the theater in 1935 or at any other time.

Mr. Wright: Perhaps I misunderstood his prior answer. Will you read it, please?

(Last question and answer referred to, was read as fol-
[fol. 470] lows: "Q. When was it you and Mr. Selman, or the Selman Brothers sold out to Schine? A. July 24th, 1935.")

Mr. Rogers: You still haven't testimony of what they sold.

Q. What was it you sold to Schine?

A. I sold my part and Dr. Dave Selman sold his stock, his part, and William K. Selman remained with Schine.

[fol. 471] Q. When you referred to parts, you are referring to your interest in the Forum Theatre at Norwalk?

A. Right.

Q. And then you went back to Apollo?

A. Back to Oberlin.

Q. You have had no connection with the Schine Company since then?

A. That is right.

Mr. Wright: You may cross-examine.

The Court: As I understand it, when the Forum was opened he was then getting R.K.O.?

The Witness: The Moose contracted for R.K.O. while I still—about ten days before I sold out the Forum Theatre they did contract for R.K.O. pictures.

The Court: How was it before the Forum was started? Before 1935 did the Moose have it then—R.K.O.?

The Witness: Yes, sir.

Mr. Wright: We will offer Mr. Felder, who was operating the Moose, who will cover during the period he had R.K.O.

The Court: I take it these negotiations you had referred to the 1935-1936 season product; is that right?

The Witness: That is right.

[fol. 472] The Court: That is the season that commenced when; the pictures would commence to be released when?

The Witness: July—August.

The Court: Of 1935?

The Witness: Of 1935.

Cross-examination.

By Mr. Rogers:

Q. The Forum was a new theatre, wasn't it?
A. It was a remodeled store room into a theatre.
Q. How many seats?
A. Approximately 500.
Q. And it was high class construction, wasn't it?
A. Modern.
Q. Modern construction?
A. Yes, sir.
Q. You spent quite a bit of money reconstructing that theatre, didn't you?
A. A fairly good amount.
Q. About how much?
A. I would say about $16,000 or $17,000.
Q. New seating?
A. Everything new.
Q. New sound?
A. Everything new.
[fol. 473] Q. You mean with the equipment it cost $16,000 to $17,000?
A. Yes, sir.

The Court: Rebuilding it?
The Witness: The building alone—it cost around—a little better than $20,000.

Q. Including the building?
A. Yes, sir.
Q. After you opened the theatre, which as I understand was in December of 1934, you operated that theatre, did you not, so far as you were concerned, until July of 1935; is that right?
A. That is right.
Q. You were a stockholder in the corporation that had the lease on that theatre, were you not?
A. No, there was no stock issued of any kind.
Q. It was a corporation, wasn't it?
A. It was a corporation.
Q. You say the stock was never issued?
A. No.
Q. What interest did you have in the corporation?
A. I was a third owner.
Q. You had a one-third interest in the corporation?

A. That is right.

Q. And Dr. Selman had a one-third interest?

A. That is right.

[fol. 474] Q. When you came to dispose of your interest with whom did you originally make your deal?

A. An option to buy was given to Mr. William Selman. I didn't know who he was selling to.

Q. One moment. Let us take one thing at a time. You gave Mr. William Selman an option to purchase your one-third interest; is that right?

A. That is right.

Q. Dr. Selman did what?

A. I don't know what Dr. Selman did.

Q. You haven't any idea what he did?

A. I don't know what he did.

Q. When you gave William Selman an option to buy your one-third interest didn't you, at the same time, request William Selman to give you an option to purchase his interest?

A. After a certain length of time, yes.

Q. Both options had time limits specified?

A. That is right.

Q. In other words, he had a certain limited time in which to acquire your one-third?

A. That is right.

Q. And you had a certain limited time within which to acquire his; is that right?

A. That is right.

[fol. 475] Q. And if you exercised your option and gave him the purchase price you would have had his one-third interest; is that right?

A. That is right.

Q. As a matter of fact, don't you know that the same kind of a deal was made between William Selman and Dr. Selman?

A. I don't know what talkings or what went on between those two. It was not in my presence.

Q. But in any event you did not exercise your option to acquire William Selman's one-third interest?

A. I didn't have the chance.

Q. Did you have the money?

A. Yes.

Q. As a matter of fact, wasn't one of the disagreements

between you and Mr. William Selman over money matters in the company?

A. Yes. He didn't have any money.

Q. You say he didn't have any?

A. Right.

Q. As a matter of fact didn't William Selman call on you to contribute additional capital toward the operation of this theatre, the Forum Theatre?

A. No, sir.

Q. Never did, you say?

A. No, sir. The company owed me a thousand dollars.

[fol. 476] The Court: What materiality has this? Are we not spending unnecessary time?

Mr. Rogers: No, sir, this is not unnecessary time.

Mr. Wright: What is it you are attempting to show? I must say I am in the dark.

The Court: I don't just see its relevancy. He had an interest in this theatre.

Mr. Rogers: Your Honor, there are b-y and sell options here. If this man claims he was forced out of this theatre——

Mr. Wright: He is not claiming he was forced out.

Mr. Rogers: I thought that was the purpose of it?

The Court: No, he claims they refused to let him have these pictures.

Mr. Rogers: And he voluntarily sold out his interest and stepped out of the theatre; is that the claim? If that is all there is to it, never mind.

Mr. Wright: That is all.

Lottie Moore resumed the stand on behalf of the Plaintiff, having been previously sworn, was examined and testified further as follows:

Cross-examination (Continued).

By Mr. Rogers:

Q. Mrs. Moore, were you able to make that compilation for us?

[fol. 477] A. Mr. Lynch and I.

Q. Mr. Lynch and you prepared that?

A. Yes, sir.

Mr. Wright: What Mr. Lynch is this?

Q. Mr. George Lynch you mean, don't you?
A. He said his name was Mr. Lynch.

The Court: What is the total?
The Witness: 271 features.
The Court: All features, you mean?
The Witness: Played that year.
The Court: That is 1937 and 1938?
The Witness: Yes. August 25th, 1937, it started, to August 14, 1938, 271 features.

By Mr. Rogers:

Q. And that is the period about which you testified to before? That was from August of 1937 to October of 1938; is that right?
A. What testimony are you referring to? This that I told you about this book?
Q. Yes. That is the period during which you played those pictures?
A. Yes, sir.

Mr. McKay: I thought you gave us August just now.
The Witness: From one year to the next.

Q. It is still about 15 months, isn't it?

[fol. 478] The Court: She has given you the dates.
The Witness: One year.

Q. In that tabulation, Mrs. Moore, how many major companies' product is included?
A. 166 major features. That includes Universal—all of the majors.
Q. The whole eight, you mean?
A. Yes, sir.

Mr. Rogers: I think that is all. Thank you very much.

Re-direct examination.

By Mr. Wright:

Q. Just one or two questions. Can we have that work sheet marked there?
A. Those are second run majors. They understand that, don't they?

Q. This sheet you handed me——

Mr. Rogers: Pardon me, Mr. Wright. Mr. McKay directed my attention to something. If he is right then I think there ought to be a correction.

By Mr. Rogers:

Q. On this tabulation that you have prepared, Mrs. Moore, you show pictures from August 15, 1937, to August 14, 1938, don't you?

A. That is right.

[fol. 479] Mr. Rogers: Just one year, your Honor; not from August to October.

The Court: That was the testimony heretofore.

Mr. Rogers: You are quite right. The testimony before was that.

The Court: It is just one year?

The Witness: The pictures that we tabulated.

The Court: That amounts to 271?

The Witness: 271 pictures.

Mr. Rogers: In other words, all the figures you have just testified to under my interrogation are all directed to the pictures from August, 1937, to August, 1938, that is one year?

The Witness: That is right.

Mr. Rogers: Thank you.

By Mr. Wright (Resuming):

Q. Mrs. Moore, there is just one thing I wanted to straighten out. I believe on the cross examination you testified that you were offered a split of the 1937-1938 Metro product some time in the winter of 1937-1938. Is that right?

A. That is right.

Q. And then on your direct examination you testified that a split had been offered you in the spring of 1938 in some conference that was held over in Lima with Mr. Drew and Mr. Brauer, the salesman?

[fol. 480] A. Will you state that again?

Q. I say, as I understood your direct testimony, it was that the split of the Metro 1937-1938 second run product had been offered to you by Mr. Drew and Mr. Brauer at a meeting over in Lima; is that correct?

A. That is right.

Q. Are those two different conversations you were talking about, or were you mistaken as to the date when you testified on cross examination?

A. It was in the early spring of 1938 when we met.

Q. You were mistaken when you said you were offered a split of the 1937-1938 Metro pictures in the winter of 1937-1938?

A. I was wrong.

Q. There was no offer made to you between September, 1937, when Drew told you they had been sold to Schine, and the spring of 1938; is that right?

A. That is right.

Mr. Rogers: Pardon me one moment. Strike the answer, please. I want to raise an objection to the question. I object to Mr. Wright's interrogation as leading.

The Court: Sustained. Just ask her if there was only one occasion when they talked about this.

Q. Was there any occasion between September, 1937, and [fol. 481] this conversation you had at Lima in the spring of 1938 when the 1937-1938 Metro product was offered to you second run?

A. We never had it offered to us only once. We talked with Mr. Drew in 1937 when we couldn't get it.

Q. The once you are referring to is the conversation you had in the spring of 1938 at Lima?

A. That is right.

Q. With Drew and Brauer?

A. Yes, sir.

Q. In this tabulation you made here did you check to see whether any 1937-1938 Metro pictures had been played during the season?

A. I didn't see any.

Q. There were none on this tabulation?

A. I didn't see any.

Re-cross-examination.

By Mr. Rogers:

Q. Are there any on the tabulation, please, Mrs. Moore? Let us put it that way.

A. No.

Mr. Wright: The tabulation you referred to is sheet here that we will have marked? Do you want it marked as a defendants' exhibit?

[fols. 482-483] Mr. Rogers: Let us have it marked for identification, in any event, so that we will know what we are talking about.

(Thereupon the tabulation sheets referred to were marked as Defendants' Exhibit D-19 for identification.)

The Court: We will now adjourn until Monday morning at 11 o'clock A. M.

(Whereupon an adjournment was taken to Monday, June 5th, 1944, at 11 o'clock A. M.)

[fol. 484] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 224

UNITED STATES OF AMERICA

vs.

SCHINE CHAIN THEATRES, INC., et al.

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Monday, June 5, 1944, at 11 o'clock A.M.

Appearances: Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Special Assistants to the Attorney General; Philip Marcus, Esq., and Milton Kallis, Esq., in behalf of the United States of America. Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

[fol. 485] PROCEEDINGS

Mr. McKay: If the Court please, when I got in last night at 1 o'clock I was handed a copy of a rather lengthy typewritten brief, which I understand has been submitted by the plaintiff to your Honor, and Mr. Rogers and Mr. Richardson and I have been working on a revision of a brief, which we had prepared for the trial two years ago, which we had intended to hand up when the court adjourned on Thursday,

but in view of the fact that the plaintiff has handed a brief to your Honor I would like at this time to hand you my copy of the brief prepared in 1942, and I have 'phoned Gloversville to send down two or three copies and I will exchange a clean copy for that with your Honor and also give Mr. Wright a copy tomorrow morning.

Before we proceed with the taking of any further testimony, in view of the fact that this record is going to be a very voluminous one, we would like to keep the record straight with regard to our objections and motions to strike, and I do not anticipate any decision by your Honor at this [fol. 486] time, but I would like to state that we renew our motion to strike all testimony of Mr. Long, Mr. Dasher, Mrs. Moore and Mr. Moore, which has to do with any conversations which they may have had with any representatives of the distributors, on the grounds already stated, and on the further ground that no connection has been made as promised by Counsel for the plaintiff.

We also move to strike all testimony of the same witnesses which has to do with negotiations for leases, with admission prices, with the operating policy of the theatre, or any theatres, mentioned by these witnesses, upon the ground that these are purely local matters, not connected in any way with Interstate Commerce.

With respect to the testimony of Mrs. Moore, we have a specific objection. It appears on page 361 of the record that after testifying to various conversations which she had with the salesman and branch manager of the United Artists she ended up by saying that the branch manager told her that there was nothing he could do about it, that the [fol. 487] matter was being handled in New York. There is a complete negation on the part of plaintiff's own witness that the two people with whom she was talking not only did not have any authority to bind Schine, they could not even bind their own employer. He said, "We have got nothing to do about it. It is being handled in New York."

We therefore move to strike all of the testimony of Mrs. Moore relating to conversations between her and either the salesman or the branch manager of United Artists.

[fol. 488] On page 364 of the record Mrs. Moore made exactly the same statement regarding the Columbia representatives. They said "There is nothing we can do about it. It is being handled in New York." And that clearly proves that neither the Columbia representatives or United

Artists representatives had any authority to bind their own company, much less Schine.

Mr. Rogers: As further supplementing what Mr. McKay just said, your Honor will recall that when evidence was attempted to be adduced by the Plaintiff with reference to declarations and letters among the executives of these so-called producer companies I objected on the ground that the proof could not be taken as evidence of combination or conspiracy and that we were entitled to have that and that it was mandatory upon the plaintiff to prove the factual matters by actual evidence of actual living witnesses, so we could have the benefit of cross-examination of such witnesses.

I knew that my law was sound on that, but I did not have the authority at hand, but that authority is well established [fol. 489] by the Supreme Court in Brown v. United States, 150 U. S. Reports, 37, Law Edition. And I also stated to your Honor that I understood the law to be that before any declarations of any alleged co-conspirators who are not parties to the suit that there would first have to be clear evidence adduced by probative witness evidence to the Court that there was a combination between these non-party distributors and the defendant Schine. I found that that was an accurate statement as well and that is supported by Hitchman Coal & Coke Co. vs. Mitchell, 245 U. S. 229, and the language in that clearly indicates, and I would like to submit that to your Honor, not necessarily at the present moment, and I would be happy indeed to give Mr. Wright a copy of it.

Mr. Marcus: If your Honor wishes us to furnish any authorities on that question, we would be glad to do so.

The Court: You have a memorandum there.

[fol. 490] Hiram H. Owens, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Marcus:

Q. Where do you live, Mr. Owens?
A. Barberville, Kentucky.
Q. What is your profession?

A. Attorney-at-law.

Q. How far from Barberville is Corbin, Kentucky?

A. About 20 miles.

Q. Could you tell the Court how far the nearest town is from Corbin, which approaches Corbin in size in Kentucky?

A. Well, Harlan is about 75 miles.

Q. Could you tell the Court how far the nearest town to Corbin is which has a theater?

A. About 14 miles.

Q. Do you have business interests in Corbin?

A. I do.

Q. Do you mean the Viv Theater, Incorporated?

A. My wife and I jointly own the property.

Q. About when did you first acquire the building in which [fol. 491] that theater is located?

A. About 35.

Q. Do you recall in 1938 making a contract with Grover Scott in respect——

Mr. Rogers: May it please the Court, I object to that on the ground that it calls for a conclusion, and I respectfully suggest that we get the facts and documents, if necessary.

The Court: All right. He may state the contract that relates to certain matter. That does not prove the contents of the contract. Proceed.

(Last question read.)

The Witness: I made a contract with respect to the operation of the theater, construction and operation of the theater in the building at Corbin.

The Court: The Viv is that?

The Witness: The Viv Theater.

The Court: That is that?

The Witness: V-i-v, the Viv Theater.

The Court: That is 1938?

The Witness: Yes.

By Mr. Marcus:

Q. Mr. Owens, do you have a copy of your subpoena with you?

A. Yes, sir.

[fol. 492] Q. Does that subpoena call for that contract?

The Court: The only question is has he got the contract here?

Mr. Marcus: He hasn't got it, your Honor.

(Witness refers to papers.)

Q. That does call for the contract?

A. Not specifically calling for that contract.

Q. But it calls for all contracts relating to that theater, does it not?

A. Yes.

Q. Were you able to find that contract to bring to this court?

A. No, I think I surrendered that contract when I subsequently made a contract with Mr. Murphy.

Q. Could you tell the Court generally the terms of that contract?

Mr. Rogers: Couldn't we have the date on which this occurred? We haven't got that yet.

Mr. Marcus: All right.

Q. About when was that contract made?

The Court: You mean the 1938 contract?

Mr. Marcus: Yes.

The Witness: About October 24th, 1938, I think.

Q. Could you tell the Court in general what that contract provided?

[fol. 493] Mr. Rogers: One moment. Pardon me. The remedies of the plaintiff have not been exhausted as yet, if Mr. Owens was correct about having surrendered the contract to Mr. Scott, it seems to me Mr. Scott is the man who should have been subpoenaed duces tecum to bring the contract into court.

Mr. Marcus: I am glad Mr. Rogers made that comment. I think the witness said he surrendered it to Mr. Murphy. We will have Mr. Murphy on the stand.

The Court: But back of that he said he delivered the first contract to Mr. Scott.

Q. Did you say to Mr. Scott?

A. I either did that or destroyed it, because the contract was cancelled. What became of it, I don't know.

Mr. Marcus: Your Honor, we have subpoenaed Mr. Scott to bring that contract, but Mr. Scott stated he turned over

his contracts to the Schines when they took over the theater. If any one has the contract it is the Schines.

The Court: Why don't you ask them to produce it, then?

Mr. Marcus: May I ask the Court to ask them to produce that document?

Mr. Rogers: If we have the document, may it please the [fol. 494] Court, we will produce it without a notice to produce it, but this is the first notice we have had that it followed this devious course, that it went somewheres and then went somewheres else.

Mr. McKay: A request was made this morning to find the contract and, at the short time at my disposal, I have not been able to do so. This is the first moment—but it was not until this morning that we were asked to look for it, and I was not able to find it in that time, and I do not know whether we have it or not.

The Court: Would the records that you have here ordinarily be the records among which you find a contract of this kind?

Mr. McKay: That should be here, but in the short time we have had to search these records, we have not located them.

The Court: You had better wait a little while then unless you want to examine him on another aspect. What is the first, the 1938 contract had to do with this matter, the contract with Murphy?

Mr. Marcus: The contract Mr. Owens made with Mr. Scott is the first instance.

The Court: I understand that. What significance has [fol. 495] that here?

Mr. Marcus: Just to show your Honor what the lessee was supposed to do, and then we will develop that the lessee did not go through with the contract because of what we claim to be——

The Court: He was the lessee?

Mr. Marcus: No, he was the lessor.

The Court: Oh, he released from Scott?

Mr. Marcus: They assigned their lease, Mr. Scott assigned his lease to the Schines, assigned the lease he had with Mr. Owens.

The Court: He said he had a substitute lease with Murphy.

Mr. Marcus: The Schines in turn did not go through with that contract. It is a bit devious, your Honor, that is why we have to proceed that way.

The Court: I was wondering why don't you proceed with the Murphy contract. I am just inquiring, I don't know.

Mr. Marcus: The reason we are starting to Mr. Owens, and I think Mr. McKay will agree we are trying to get Mr. Owens out.

Mr. Rogers: And I will agree we will try to expedite Mr. Owens, and I agree he should be the first witness in order to expedite his return to Kentucky. That, however, does not [fol. 496] alter the laws of evidence and Mr. Marcus should adhere to his laws of evidence, should get his evidence in properly.

Mr. Marcus: We have, your Honor. Of course we have subpoenaed both parties that we understood to have those documents, and asked them to produce those documents. They came up and it was Saturday that we found out from Mr. Owens that if any one still had that contract it was the Schines. Saturday, as I understand it, none of you gentlemen were in the city.

Mr. Rogers: That is true. I had to leave, as I explained, on Friday.

Mr. Marcus: This morning, as Mr. McKay has stated, we tried to find out if they had that contract.

Mr. McKay: I was in my office all day Saturday and available by telephone.

Mr. Rogers: I was available.

The Court: You say Mr. Scott destroyed it or turned it over to some company?

Mr. Marcus: That is right.

The Court: If it is presumably lost it may be testified to.

Mr. Marcus: That is our position. Mr. Owens has [fol. 497] testified that he has been unable to find that contract.

The Court: We can proceed with the testimony and then it can be stricken out if later the contract is found different.

Mr. McKay: If my recollection is right, your Honor, the construction of that contract was the matter of a very serious dispute between Mr. Owens and Mr. Scott, as a result of which Mr. Owens purported to cancel the contract, and I think it is quite important——

The Court: Cannot that be developed on cross-examination?

Mr. McKay: I am getting at this. I think under those circumstances it is quite important that the exact wording

of the contract be before your Honor and not Mr. Owens' recollection of what he put in it six years ago.

The Court: You are trying to convenience the witness and at the same time you are holding him up. Can you get that this afternoon, do you think?

Mr. McKay: All I can do, your Honor, is in the hour and a quarter noon recess I can make as extensive a search as possible.

The Court: You had better put somebody else on the stand.

Mr. Rogers: On the question of compliance with that particular term, which was a condition—not merely a term [fol. 498] but a condition.

Mr. Marcus: Your Honor, may I make this suggestion, that this testimony as to the terms of the contract be taken subject to being stricken if the contract is not found by the Schines?

The Court: If the contract is found it will have an impression upon the testimony as to its contents. I think we had better hold it until 2 o'clock this afternoon.

Mr. Wright: The whole matter of the contract, your Honor, is a collateral issue anyway. All it is is simply background, as I understand it, to show what happened in these later dealings. I do not see that it is really worth the elaborate fuss that is being made over it. All I understand he is going to testify to is that he had a contract for the construction of the theatre with Mr. Scott, and that Mr. Scott was not able to get pictures and he didn't go through with the contract and he assigned it to Schine.

Mr. Rogers: May it please the Court, I do object to Mr. Wright trying to testify in this case.

The Court: Just a moment. Let Counsel finish. If that is all you contend for then your testimony is that he made [fol. 499] a contract for the lease of the theatre and that is all there is to it.

Mr. Wright: Only to the extent of showing that money was to be advanced by the lessee to complete the theatre building. That is all, as I understand it, all that he wants to show, a perfectly simple fact.

The Court: He gave up the lease, did he not?

Mr. Wright: Yes, assigned the lease, and then neither Scott nor Schine would advance the necessary amount to complete, and as I understand Schine came in and offered

to pay him so much money not to build. That is all we are trying to show.

The Court: That is all that is necessary, it seems to me, to show that. He testifies now that he leased the theatre to Scott.

By Mr. Marcus:

Q. Mr. Owens, after this contract was made did you make any demand on Mr. Scott to perform his part of the contract?

A. I did.

Q. Were those demands complied with?

A. No, sir.

Mr. Rogers: Now, may it please the Court, it seems to [fol. 500] me that these are conclusions. I move to strike them. Your Honor has ruled that the content of this instrument is not necessary. We proceed from that point on, and Mr. Marcus proceeds and insists on asking whether a compliance was made with this instrument, which is not before the Court, and I move to strike it.

The Court: Motion granted.

Q. Mr. Owens, do you recall being contacted by representatives of the Schines in regard to this theatre, and if you do will you state approximately at what time?

A. I was contacted by two gentlemen who represented themselves as being a Mr. Lazar and a Mr. Hensler, neither of whom I had previously seen.

Mr. Rogers: I move to strike it.

The Court: This was when?

The Witness: That was at the latter part of 1938.

Mr. Marcus: Your Honor, I should like to read into the record now from Schine's answers to interrogatories. This is answer to interrogatory No. 2, entitled "Addresses of principal executive offices and all branch offices of defendant, excluding officers of each theatre operated by defendant, and the nature and extent of the business which is [fol. 501] carried on at each office. Name and period of employment of each manager since August 1, 1931. Duties and authorities of each manager, and geographical territory covered by each office. Bellefontaine, Ohio, Division office, Louis Lazar, 5-10-35, to date. Division manager, such duties as are assigned by the executive office. Also

booking office for Ohio and Kentucky theatre, 1937-1939. Geographical territory Ohio, Kentucky and Virginia. As to Schine's Lexington Corporation: Louis Lazar, Director, 11-10-36-12-22-36. Vice President 10-1-36—11-10-36. 1-9-39 to date. Assistant Secretary 11-10-36—12-22-36. Assistant Treasurer 11-21-38 to date.

As to Schine Lexington Corporation, Lou Hensler, Lexington, Kentucky, Assistant Secretary, 12-31-30—2-1-41."

The Court: Are all these interrogatories being put in?

Mr. Marcus: Yes, we are offering this part of the interrogatory now.

The Court: Is it necessary to read them all into the record? If you are going to go through all these theatres [fol. 502] in the same way it will make it rather lengthy.

Mr. Marcus: I just want to inquire as to these two gentlemen.

Mr. McKay: With respect to the last dates read by Mr. Marcus, they do appear in the interrogatory, but it is an obvious typographical error, because in 1930 we did not have that corporation. We did not acquire it until years later. I think in all probability it should be 1940. It is Lou Hensler of Lexington, Kentucky, the very last item Mr. Marcus read. I know it is wrong. I think the date should be 1940, but I will check and supply the correct date.

The Court: I thought if you were going to refer to many of these theatres, we have the interrogatories in evidence, and when the question came up each time you could state to the Court what it shows.

Mr. Wright: I think we might later make an offer, but this was just to get Mr. Owens——

The Court: Do you mean a few of them or all of them?

Mr. Wright: I think they will all eventually be offered, but I do not like to interrupt Mr. Owens' testimony at this time.

[fols. 503-504] The Court: You are only offering what concerns these witnesses now?

Mr. Marcus: That is right.

The Court: Is that all?

Mr. Marcus: That is all.

By Mr. Marcus:

Q. Mr. Owens, did you have more than one discussion with these representatives of Schine's with respect to that theatre?

A. Two with Mr. Lazar, Mr. Hensler being present, but he did not enter into the discussion.

Q. On that first occasion will you tell the Court what was said?

Mr. Rogers: Can we get that fixed fairly accurately as to month?

The Court: He said in the fall of 1938.

Mr. Rogers: He does not say when. About when would you say?

The Witness: Between the 1st and 15th of December, to the best of my knowledge. Mr. Lazar, after having introduced himself, began discussing with me the discontinuance of the construction of the Viv Theatre building.

The Court: Then under construction, you mean?

The Witness: Yes. I had started the construction. The entire building had several business places in it, one of [fol. 505] which was being altered for a theatre and not new construction, and I told Mr. Lazar that I desired the theatre to be constructed and operated because of the enhancement of the additional property. The property itself covered about a half a block, the front to the theatre about 25 feet, and that left six or seven additional places for business on Main Street. The theatre room itself lies back of these small business places fronting on Main Street, the entrance being from Main Street. Mr. Lazar indicated that he would be willing to pay a fair sum if I would not construct the building or convert this room into a theatre, and finally he suggested that possibly $5,000 would be paid, and I told him that that would not interest me, and he then—or either before that—requested that I make a proposition, and I told him that if through the ten-year lease contract which I had previously made with Scott & Scott he would pay $150 a month that I would discontinue and would not convert it into a theatre room.

[fol. 506] The Court: What period of time?

The Witness: A ten-year period. So that he indicated that he thought those terms would not be met, but stated that he would have an interview with Mr. Schine, as I recall, the following Friday, which was probably three days following the interview, and that after he had interviewed Mr. Schine he would at once let me know as to my proposition, and he suggested that I not spend any more money on it. I then stepped to the telephone and stopped the shipment

of brick, and on the same day I contacted the foreman who was on the work and directed that he discontinue work. I waited the remainder of that week and some days later and I had no answer from Mr. Lazar, and I again began the construction of the building.

After I had again begun the construction of the building Mr. Scott, Sr., called me over the local telephone in Barbourville and stated that he would like to see me, and I told him it would be perfectly all right, so that he and Mr. Lazar and Mr. Hensler came to my office. We again [fol. 507] took up the discussion of not constructing this building, or the theatre part of it.

Mr. Rogers: Pardon me for interrupting. May we get the date of that next talk?

The Witness: That was around the middle of December, 1938, to the best of my knowledge. So Mr. Lazar then suggested that possibly $7,500 would be paid, and I told him that I would not be interested at that figure, that I would go ahead with the construction of the building, which I did.

Q. In other words, Mr. Owens, as you have just testified, on one occasion you were offered $5,000 and on the subsequent occasion $7,500 in order not to construct the building?

A. Not a specific offer, but it was suggested that that might be paid.

Q. Mr. Owens, did you cancel that contract you had with Scott?

A. Yes, sir.

Q. Did you thereafter, in May of 1939, enter into another contract with M. K. Murphy, in respect to leasing and operation of that theatre?

A. Yes, with Mr. Murphy, in the name of King Codd Theatres, Inc., but that lease, at the request of Mr. Murphy, was changed to Mr. M. K. Murphy.

[fol. 508] Q. Prior to the time you made this lease with Mr. Murphy had any one else contacted you with respect to the possibility of leasing your theatre?

A. Yes, other persons had seen me with reference to leasing it. A Mr. Scott of Vevay, Indiana, is one whom I specifically recall.

Q. But no lease was made, was it?

A. No lease was made.

Q. What was your understanding of the reason why no lease was made?

Mr. Rogers: Just a moment. I object to that as calling for a conclusion.

The Court: Sustained.

Q. Mr. Scott, to go back to those conversations you had with Mr. Lazar and Mr. Hensler, do you recall anything being said on those occasions in respect to your ability to obtain tenants for the theatre you were constructing?

A. On one of the conversations——

Mr. Rogers: May we get the date, please?

The Court: This is one of the two conversations.

Mr. Rogers: Which one was it?

The Witness: I think it was in the first conversation which I had with these two gentlemen, or with Mr. Lazar in the presence of Mr. Hensler. It was suggested by Mr. [fol. 509] Lazar, as I recall, that in view of the fact that Schine had two theatres in the town and had greater buying power than I would have as an individual, that I would have difficulty in operating the theatre myself or in securing a tenant to operate it.

Q. Mr. Owens, do you have with you the contract you made with Mr. Murphy?

A. No, sir. I looked for that contract before I left home in the places where I usually keep them, but I was unable to locate it.

Mr. Marcus: Your Honor, we are in the same position on that.

The Court: Is that contract in existence now with Murphy?

The Witness: Yes, it is, your Honor. Mr. Murphy had a duplicate contract.

Mr. Marcus: Your Honor, we are in the same position again with regard to that contract because Mr. Murphy has informed me that he turned over his documents to Schines when they took over the theatre from him, and I would like to ask Mr. McKay if he can look for that contract also.

Mr. McKay: We made the same search for that as we did with the Scott contract, with the same result. We will [fol. 510] continue the search at noon.

Q. Mr. Owens, after that theatre was built could you give the Court a brief description of that theatre?

A. The theatre has a foyer entering onto Main Street,

which is near to and composing a part of the center portion of the business section of the city of Corbin, which city has a population within and adjacent to the corporation of approximately 10,000 population, sometimes more, but approximately 10,000. The entrance goes back 105 feet. That is, the lot is 105 feet deep. Then the room after the foyer is subtracted from the main theatre room is 110 feet, which opens on a street running at right angles to Main Street.

Q. Could you tell the Court something of the nature of the theatre itself, any interior decorations? How did it appear? Would you call it a nice-appearing building?

A. The exterior of the building for the entire front has a mural glass front, two story-s high, with the glass being not all of one color, but undertaking to be placed artistically with various designs throughout the 110 feet front. The inside of the foyer has a mural painting probably 40 to 50 feet. On the right there is one entrance. The interior is decorated as we thought with the most modern artistic designs, both in the foyer, the office, the rest rooms and the [fol. 511] theatre proper.

The Court: Any gallery in the theatre?

The Witness: No gallery. One floor, your Honor.

Q. Are you familiar with the other theatres in the town?

A. Yes, I have been in each of the other theatres.

Q. Can you state to the Court how they compare in appearance with the Viv Theatre?

A. At that time they were not as modernistic as the Viv building.

Q. Mr. Owens, who is your present tenant for the theatre?

A. Corbin Theatres, Inc., or Corbin Theatre Company, I believe it is.

Q. Do you know whether or not that is one of the Schine enterprises?

A. I have no specific knowledge.

Mr. McKay: Not to interrupt Mr. Marcus, but this is one of the theatres which we are ordered to dispose of under your Honor's temporary order of May 19, 1942.

Mr. Marcus: That is quite right. Your witness.

The Court: Cross-examine.

Cross-examination.

By Mr. Rogers:

Q. Mr. Owens, you have kept your interest in the town of [fol. 512] Corbin rather active, haven't you, right through?

A. Yes, sir.

Q. And you have observed conditions generally in the town?

A. Yes, sir.

Q. Before you undertook the construction of the Viv Theatre there were two other motion pictures in the town, were there not?

A. Yes, sir.

Q. And will you please tell me the name of those two theatres?

A. The Kentucky and the Hippodrome.

Q. And they are still operating in the town, are they not?

A. I am not sure that the Kentucky is operating.

Mr. Marcus: Your Honor, it is stated in Schine's answers to the interrogatories that the Kentucky was closed. I don't quite know the purpose of Mr. Rogers' question.

Mr. Rogers: If you will just pardon me, I am trying to explore Mr. Owens' memory. That is all I am trying to do.

A. I am not sure that the Kentucky is operating. I am not positive.

Q. You do know, don't you, that both the Kentucky and the Hippodrome were refurbished and redecorated since you started the building of the Viv Theatre?

A. I have so understood, yes.

[fol. 513] Mr. Marcus: Will you find out about when?

Mr. Rogers: If that is your request I have no objection to asking Mr. Owens the question.

Q. Will you give us an idea, to the best of your recollection, if you have any recollection on the subject, when this was done?

A. I have no definite recollection.

Mr. Rogers: That is all.

Redirect examination.

By Mr. Marcus:

Q. Just one question. Would you be able to recall whether this change in the Kentucky or the Hippodrome took place before or after 1942?

A. I am quite positive that the Kentucky was subsequent to that date.

Mr. Marcus: Your Honor may recall that we have agreed not to go beyond 1942.

Mr. McKay: You may have but we have not.

Mr. Marcus: That is all.

[fol. 514] Recross-examination.

By Mr. Rogers:

Q. Just one question: Before you started reconstruction of the theatre both the Kentucky and the Hippodrome were open and operating at that time as motion picture theaters, weren't they?

A. Yes, sir.

The Court: 1938?

Mr. Rogers: That is all, Mr. Owens. Thank you.

At the close of Mr. Owens' testimony, may it please the Court, I move to strike the testimony given by Mr. Owens on the ground that the testimony refers only to local matters and to local situations and in no manner tends to come within the scope of the complaint and the allegations in the complaint in reference to issues raised in the complaint and the answer.

The Court: Overruled.

[fol. 515] Grover C. Scott, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Marcus:

Q. Mr. Scott, where do you reside?

A. Louisville, Kentucky.

Q. And what is your present occupation?

A. I own a motor court.

Q. In the beginning of 1938, were you operating any theaters in Kentucky?

A. Yes, sir.

Q. Will you state to the Court what theaters you were operating and where they were?

A. The Liberty Theater, Pikeville, the Margie-Grand, Harlen.

The Court: Any other?

Mr. Marcus: This is beginning 1938.

Mr. Rogers: You are fixing this at the beginning of 1938.

Mr. Marcus: 1938.

Q. In 1938 did you become interested in operating a theater in Corbin, Kentucky?

A. I secured with my son a lease.

Q. Do you recall about when that occurred?

[fol. 516] A. The fall of '38.

Q. Do you have a copy of your subpoena with you, Mr. Scott?

A. Yes, sir.

Q. Does that subpoena ask for the contracts relating to the Viv Theatre?

A. It asks for all letters, telegrams and other written communications.

Q. Does it mention agreements at the very beginning?

The Court: Between you and who?

Q. In respect to the theater?

A. This was between the major film distributors which relate to the negotiation of or request for an opportunity to negotiate for the leasing of pictures in Corbin, Kentucky.

Q. Look at Item 7.

Mr. Rogers: Does that just relate to letters, the part you read?

Mr. Marcus: We will straighten it out.

Q. Look at 7.

A. Yes, sir, that asks for a contract.

Q. That asks for that contract. Do you have that contract with you?

A. I do not.

Q. What happened to that contract?

A. Well, sir, the last I knew anything about it it was cancelled and all records I had—you see it was made to me and [fol. 517] my son and when I sold my interest in the Margie-Grand to my son, those records were left in the office, in the files, at the Margie-Grand Theatre.

Q. In other words, those records were turned over to your son?

A. I didn't get them, no, sir.

The Court: Does that mean records between you and the preceding witness, you mean?

Mr. Marcus: Owens, that is right.

Q. After entering into this contract with Mr. Owens did you attempt to get any film product for the theatre?

A. Yes, sir.

Q. How soon after entering into this contract did you attempt to get product?

A. A very short while.

Q. And where did you go?

A. Cincinnati, Ohio.

Q. Is that where the branches of the major film distributors are located covering product for Kentucky?

A. Yes, sir.

Q. Could you tell the Court briefly how the product which is bought in Cincinnati is brought to Kentucky and returned?

A. By Railway Express.

Q. The product is actually delivered—are those the prints [fol. 518] of the film?

A. Yes.

Q. And they are actually delivered to you in Kentucky?

A. Yes, sir.

Q. And then they are returned to you in the branch office in Cincinnati, Ohio?

A. Yes, except when we are instructed to ship them to some other theater.

Q. Mr. Scott, do you recall going to the Universal Exchange in Cincinnati, Ohio trying to get product for this theatre?

A. Yes, sir.

Q. And could you tell the Court what occurred on that occasion?

Mr. Rogers: Pardon me, may we get the date first.

Mr. Marcus: He said almost immediately after.

Mr. Rogers: That might mean almost anything in this witness' mind. Let us get a date.

Q. About how soon after making this contract with Mr. Owens in respect to weeks or months, did you go to Cincinnati?

Mr. Rogers: Well, Mr. Marcus, you haven't yet gotten any specific date.

Mr. Marcus: We did from the preceding witness who stated October 24th, 1938.

Mr. Rogers: We are enttiled to get it from this witness.

[fol. 519] The Court: He said the fall of '38.

Mr. Rogers: The fall of '38 is what he said.

The Court: That was about what time in reference to when you made this contract, Mr. Scott? You said in the fall. Can you say the date?

The Witness: I have no definite recollection.

The Court: Is that as near as you can specify?

The Witness: Well, I don't know nothing definite. I would say to the best of my knowledge it was within ten days after I signed the contract.

The Court: When did you sign the contract? You said the fall of '38. That covers several months.

The Witness: I can't state. I don't remember.

The Court: Well, August, September, October or November.

Mr. Marcus: Your Honor, I think we might be able to get at that date in another way.

The Court: All right.

Q. Mr. Scott, I show you this document, which purports to be an agreement between you and the Schines, and ask you to read the first paragraph, and state whether that refreshes your recollection as to the date when you entered into a contract with Mr. Owens?

A. Is this what you want me to read (referring to the document)?

Q. That is right.

[fol. 520] A. (Reading) "Whereas"——

Mr. Rogers: Please, Mr. Scott.

Mr. Marcus: Read it to yourself.

Mr. Rogers: His answer should be either "Yes" or

"No," may it please the Court. Does it refresh his recollection.

Mr. Wright: I don't see how it makes any difference whether this witness can fix the date inasmuch as it has already been fixed by the other witness and he said he had the conversation about ten days after he made the contract.

The Court: Counsel has asked a question.

Mr. Wright: It was in response to the objection that he wasn't able to fix the date. He said ten days after the making of the contract.

Mr. Rogers: As a matter of fact, Mr. Owens was no better at fixing dates than Mr. Scott is. He doesn't know where the contract is.

The Court: He said about ten days after the contract was made.

Mr. Rogers: And we don't know when the contract was made.

Mr. Marcus: That is in the transcript. Mr. Owens did testify to the exact date.

The Court: He didn't have the exact date here. All right.

[fol. 521] By Mr. Marcus:

Q. Mr. Scott, what occurred at the time you had your conversation with some one in the Universal Film Exchange in regard to product?

Mr. Rogers: One moment, please. I object to that on the ground we are entitled to know who this some one is and what he is, and what authorities this some one had to discuss it.

The Court: He can say who he talked with there.

Mr. Marcus: That is right.

Q. With whom did you speak?

A. I talked with Paul Reiger.

Q. What was his position?

A. Manager.

Mr. Rogers: One moment. I object to that. It calls for a conclusion.

The Court: Did you know him as Manager?

The Witness: Yes.

The Court:

Q. Had you had dealings with him before?
A. Certainly had.
Q. In what connection?
A. I bought pictures from him.

The Court: From the Universal, you mean?
The Witness: Yes, sir.
The Court: How frequently and how long?
[fol. 522] The Witness: Well, I have been in the show business from 1921 up to that time.
The Court: Overruled. Go ahead. What talk did you have with him?
The Witness: I asked him for product for Corbin, Kentucky, and we agreed on the prices, the application.
Mr. Rogers: I move to strike on the ground it calls for a conclusion. Let us get the conversation.
The Court: We have to take your best recollection of what was said. You said "We agreed" on something. That is your conclusion.

By Mr. Marcus:

Q. Mr. Scott, did you sign an application for product?
A. I signed an application.
Q. Mr. Scott, did you ever get a contract from Universal for that product?
A. Only a copy of the contract. I had a copy.
Q. You never got an approved contract?
A. The approved contract I never saw.
Q. Did you go back to Universal to find out why you had not gotten the contract?

Mr. Rogers: One moment. I object to the form of that question.
The Court: He testified he didn't get the product. Did [fol. 523] he testify to that?
Mr. Marcus: That is right.
The Court: Did you get the product?
The Witness: I made an application, but I never did get an approved contract.
The Court: All right.

Q. You never got any product from Universal then?
A. No, sir.

Q. Did you go back to inquire about product again to Universal?

A. Yes, sir.

Q. And what occurred on that occasion?

Mr. Rogers: And when was that, may we be informed?

Q. About how soon after the first occasion that you went there?

A. I can't say definitely.

The Court: Approximately the time.

The Witness: Two to three weeks.

The Court: Two or three weeks.

Q. What was said to you by Mr. Reiger on that occasion?

A. He advised me he didn't think he would be able to furnish me the Universal product.

Q. Mr. Scott, what was the name you intended to give to that theatre?

A. Well, on the application I made for pictures the "Roxy" Theatre.

[fol. 524] Mr. Marcus: Will you mark this for identification, please?

(Thereupon the contract, referred to, was marked as Plaintiff's Exhibit P-19 for identification.)

Q. Mr. Scott, I show you Plaintiff's Exhibit P-19 marked for identification, a document which purports to be a contract between you and Universal, and ask you whether this is your signature?

A. It is.

Mr. Marcus: Your Honor, at this time, we would like to offer in evidence this contract, or this document, which purports to be a contract.

Mr. Rogers: Which one do you propose to introduce, Mr. Marcus? You have three or four contracts here. Will you please look at them, Mr. Marcus and tell us which you wish to offer. I see three or four contracts here.

Mr. Marcus: As a matter of fact, we will offer this one here.

Mr. Rogers: This is the one Mr. Marcus, you wish to offer? Don't you think you ought to detach the rest?

Mr. Marcus:

Q. Mr. Scott. I would like to ask you one more question: [fol. 525] Is this the form of the application that you signed that you referred to?

Mr. Rogers: One moment. I object to the witness characterizing the document. The document speaks for itself, if it is going to be offered.

The Court: Is that the application?

Mr. Rogers: That is the contract, he says.

The Court: You have two things here. You have an application and the contract. Is this the application?

Mr. Marcus: That is as I understand it, your Honor. The exhibitor will sign what is called an application and then it is sent to the home office and when it is approved there it becomes a contract.

Mr. McKay: And that appears to be an approved contract.

Mr. Marcus: I was going to bring that out, your Honor. We offer this document purporting to be an approved contract with Universal at this time to show several things, one——

The Court: Is this the original?

Mr. Marcus: I will show it to you?

Mr. Rogers: That is the original.

The Court: All right. Go ahead.

[fol. 526] Mr. Marcus: Your Honor, may recall that Mr. Scott testified that he never got a copy of an approved contract from Universal. This document which we are offering has the stamp of approval from the home office, and nevertheless Universal never sent the copy to Mr. Scott.

The Court: Where did this come from?

Mr. Rogers: Where did this come from?

Mr. Marcus: This came from the files of Universal.

The Court: Is that signed by Mr. Scott?

Mr. Rogers: Yes, sir.

The Court: All right.

Mr. Marcus: We are interested in showing, your Honor, that despite the fact that this contract was actually approved in the home office Universal never gave any——

The Court: All right. He said he didn't get any product.

Mr. Rogers: May it please the Court, I do object and protest against these statements being made in the record about

what they are going to prove and the reasons for introducing. Let them prove it by testimony.

The Court: Just prove the signature is all.

Mr. Rogers: Yes, certainly, and not make all these state-
[fol. 527] ments about what he is going to prove and what it will prove. I believe your Honor will disregard those statements unless they are supported by evidence.

The Court: Yes. Go ahead.

Mr. Marcus: Your Honor, may I read the terms?

Mr. Rogers: Will you please put it in evidence first before you read anything?

Mr. Marcus: I offer this in evidence, Plaintiff's Exhibit P-19, marked for identification. With your Honor's permission, may we substitute photostats? I believe there is no objection.

Mr. Rogers: You wish to substitute a photostat for this. I have no objection to that.

Mr. McKay: No objection to the use of photostats, but I think when you come to read these things, you will have an awful job reading a photostatic copy. I think in cases of these printed forms I believe it is much better to leave the original in the record. There is no objection on the ground they are photostats.

Mr. Rogers: I also might make a suggestion to your Honor on the basis of mercy, and that is this, if they do give you photostats in heaven's name ask them to give you
[fol. 528] a black print and white back and not black background and white print.

The Court: We will take that up. Any objection?

Mr. Rogers: No objection.

The Court: Proceed.

(The Contract previously marked for identification was received in evidence and marked as Plaintiff's Exhibit P-19.)

Mr. Marcus: I would just like to read the rental terms of the contract. This provides for eight features to be run two days to be exhibited on Sunday and Monday. The rental terms $75 as against 35 per cent of the gross receipts and eight pictures for two days at $50, eight for two days at $40, eight for two days at $20, and eight for two days at $15.

The Court: What is the date of that?

Mr. Rogers: There are two dates, your Honor. There is the application date and the approval date. The red stamp is the approval date, your Honor.

The Court: When was this theatre completed there?

The Witness: It was not completed before I had my lease cancelled. I was only trying to get the product, as [fol. 529] soon as I got the lease I was trying to get the product.

The Court: When was it completed?

The Witness: I couldn't say.

Mr. McKay: Mr. Owens tells me it was completed in June of 1938, your Honor.

(Mr. Marcus hands paper to Mr. McKay and Mr. Rogers.)

Mr. Rogers: What do you propose to do with that interesting photostat?

Mr. Marcus: I want to offer this in evidence. Do you have any objection to this?

Mr. Rogers: I most certainly do strenuously object to that on the ground it is not binding on these defendants. It contains gratuitous statements at the foot of it, most of which are not even borne out by facts.

Mr. Marcus: This purports to be a cancellation or alteration of the contract made with Mr. Scott by the Universal Film Exchanges, and that is the only purpose for which it is offered.

Mr. Rogers: You mean the one you just introduced as P-19?

Mr. Marcus: That is right.

Mr. Rogers: Would you please be so good as to delete [fol. 530] or cut off the bottom of it?

Mr. Marcus: Isn't this sufficient to have the record show?

Mr. Rogers: No, Mr. Marcus, it is not sufficient to do anything of that kind. I just don't like things of that kind done. If you have a good safety razor blade or a good scissors just take it off.

Mr. Marcus: Mr. Scott, do you recall going to the Cincinnati Film Exchange of United Artists at the time or around the time you went to Universal?

The Witness: Yes.

By Mr. Marcus:

Q. Whom did you see there, Mr. Scott?
A. Mr. Stahl.
Q. What — his position?
A. Manager.
Q. What did he say to you?

Mr. Rogers: You mean Branch Manager?
The Witness: Manager of that.
Mr. Rogers: Branch Manager?
The Witness: Yes, sir. Why, he took an application for his product.

[fol. 531] By Mr. Marcus:

Q. Did you obtain that product?
A. I did not.
Q. Did you call upon that Exchange after making that application to inquire about that product?
A. I did.

Mr. Rogers: May I get the date of that, please, the second talk?

Q. Approximately how long after the first occasion, Mr. Scott, did you go to United Artists again?
A. Approximately two to three weeks.
Q. Did you inquire for product for this theatre from any of the other Exchanges there?
A. Yes, sir.
Q. Did you obtain any product?
A. Yes, sir.
Q. What product did you get?

Mr. Rogers: Let us take the companies individually and not try to lump from them, if you please.

Q. Did you get products from Fox?
A. No, sir.
Q. Did you get a contract from United Artists, Mr. Scott?
A. The application, never received the approved contract.

The Court: You never received the approved contract?
The Witness: No, sir.

[fol. 532] Q. Did you get a contract for film from this theatre for 20th Century-Fox?
A. Not that I know of. I don't recall.

Q. Did you get a contract for film product for Loew's for this theatre?

A. No, sir.

Q. Is that true of Columbia?

Mr. Rogers: One moment, please, Mr. Marcus, let us first discover whether or not Mr. Scott ever tried to get any product from Loew's, instead of brushing it aside so lightly.

The Court: Let him show whether he got any contract.

Mr. Rogers: Yes.

The Court: If he didn't attempt to get any——

Mr. Marcus: He stated, your Honor, he had attempted to get a contract of product with these Exchanges.

The Court: He said from other companies.

By Mr. Marcus:

Q. Will you specify the particular corporation in which you attempted to get product for this theatre?

A. I bought Republic Pictures product.

The Court: And a defendant is that?

Mr. Rogers: Yes, sir.

The Witness: And Monogram Pictures Corporation.

Q. Did you go to the Film Exchange in Cincinnati of [fol. 533] Loew's in order to try to get product for that theatre?

A. Metro-Goldwyn-Mayer, I did.

Q. You did?

A. I asked for second-run product.

Q. Did you obtain a contract for that product?

A. No, sir.

Mr. Rogers: Can we get some idea of the date when he went and whom he spoke to at Loew's.

Mr. Marcus: Do you mean the date?

Mr. Rogers: Oh, yes.

Q. You stated, Mr. Scott, did you not, that you went to Cincinnati almost immediately after making the contract to get the product?

A. Yes, sir.

Q. Was it at that time you visited all of these Exchanges in making that attempt?

A. Yes, sir.

Q. In respect to Fox product did you go to the Film Exchange there?

A. I don't remember.

Q. Do you recall whether you went to any other Film Exchanges of the major film distributing companies?

A. I remember going to Metro-Goldwyn-Mayer.

Q. Mr. Scott, did any of the Schine representatives get in touch with you in respect to your lease with Mr. Owens, [fol. 534] if so, approximately when?

A. They did. I can't say the date.

Q. Could you place it as to seasons? Would that have been in the fall of 1938 after you had made your agreement with Mr. Owens prior to 1939?

A. Best of my recollection, it was either November or December.

The Court: Understand you got the Monogram and Republic. You got those?

The Witness: That is right.

Mr. Marcus: Will you mark these two papers for identification?

(Thereupon two papers purporting to be contracts, referred to, were marked as Plaintiff's Exhibits P-20 and P-21 for identification.)

Q. Mr. Scott, did you enter into an agreement with the Schines in respect to the theatre which was being built in Corbin?

A. Yes, sir.

Q. I show you Plaintiff's Exhibit P-20, marked for identification, and Exhibit P-21, marked for identification, and ask whether these are the contracts you made with Schines at that time? (A pause). That is the signature at the end of those contracts? I just want you to identify [fol. 535] them.

The Court: There is no question that is your signature?

The Witness: That is my signature. (Referring to Exhibit Plaintiff's P-20,) and this is my signature (referring to Plaintiff's Exhibit P-21.)

The Court: I suppose you gentlemen have copies of these, and don't have to spend much time with it.

Mr. Marcus: They should have.

Mr. McKay: We did at one time, I know.

Mr. Rogers: There is no objection to it excepting on the ground that the contents of the document is immaterial and also on the ground that the document relates to purely local transactions.

The Court: Overruled.

Mr. Marcus: I would like to offer Plaintiff's Exhibit P-20 in evidence.

(The contract dated Nov. 25th, 1938, previously marked for identification as Plaintiff's Exhibit P-20, was received in evidence.)

[fol. 536] Mr. Rogers: May it appear on the record, may it please the Court, that this exhibit now being offered, being P-21 for identification, in evidence, consisting of several documents, one contract purporting to bear date November 30, 1938, between G. C. Scott of Pikeville, and Schine Lexington Corporation, has the last page, to wit, page 5, missing. Is that right?

Mr. Marcus: That is right. At this time, your Honor, may I ask the Court to direct the Schines to furnish their copy, if they have it, so that we can substitute their copy for this, which has one page missing?

Mr. Rogers: If it is received there will be no objection to that.

The Court: Yes.

Mr. McKay: The page that is missing is the signature page.

Mr. Marcus: I now offer Plaintiff's Exhibit 21 for identification in evidence, consisting of a letter of December 2nd, 1938, from Lazar to G. C. Scott, and an agreement of December 2, 1938, between G. C. Scott, L. B. Scott and the Corbin Theatre Company.

Mr. Rogers: May it please the Court, I object on the ground that these documents are incompetent and im-
[fol. 537] material, and on the further ground that they relate to purely local transactions.

The Court: Received.

(Thereupon the papers referred to previously marked as Plaintiff's Exhibit P-21 for identification were received in evidence.)

The Court: We will now take a recess until 2 o'clock.

(Whereupon a recess was taken until 2 o'clock p. m.)

[fol. 538] After recess, 2 o'clock p. m.

Appearances: As before noted.

Mr. McKay: Your Honor, during the noon recess we were able to locate the original lease between Hiram H. Owens and his wife Georgia B. Owens. We haven't yet been able to find the contract between Owens and Scott, but we are continuing our search and I am producing the lease, and I have a copy here. I would prefer to have, if the plaintiff is going to mark it, I would like to have the copy marked instead of the original, and subject to our objection as to materiality and that it is purely a local transaction.

The Court: Yes.

(Thereupon the contract dated May 19th, 1939, referred to, was marked as Plaintiff's Exhibit P-22 for identification.)

Mr. Marcus: I offer this contract of May 19th, 1939—this is between Owens and Murphy.

Mr. McKay: Yes, that is what I said.

Mr. Marcus: I will offer the contract of May 19th, 1939, between Owens and Murphy.

[fol. 539] (The contract dated May 19th, 1939, previously marked as Plaintiff's Exhibit P-22 for identification was received in evidence.)

Mr. Marcus: Your Honor, I would like to read into the record at this time some of the provisions of the contract of November 25th, 1938, between The Schine Corporation and Grover Scott, Plaintiff's Exhibit P-20.)

The Court: Why do you want to read that into the record if you have your exhibit in evidence?

Mr. Marcus: That is perfectly all right.

The Court: You can state to the Court, but it is not necessary to copy it in the record as an exhibit.

Mr. Marcus: This agreement states Grover Scott and Leon Scott are owners of a lease on a theatre in Corbin, between Grover Scott and Hiram Owens. Then this same agreement provides that an assignment will be made of Mr. Scott's interest in that agreement, and also provides——

The Court: Assignment will be made or can be made?

Mr. Marcus: Will be made. There is another agreement December 2nd, 1938, which carries into effect this other agreement.

Provision is made also for the Schines engaging in [fol. 540] booking for the Margie-Grand Theatre, which Mr. Scott testified he was operating in Harlan, and this contract of December 2nd, 1938, between Mr. Scott and the Schines consists in part of the assignment and in part of the agreement for the booking by Schines for the Margie-Grand Theatre in Harlen. It also includes certain provisions in respect to the Liberty Theatre in Pikeville, but we will take that up, your Honor, when we come to discussing the situation in Pikeville.

GROVER A. SCOTT resumed the stand on behalf of the Plaintiff, and testified further as follows:

Direct examination (continued).

By Mr. Marcus:

Q. Mr. Scott, had you had any negotiations prior to the date of this contract with representatives of Schine in respect to the making of a contract for that theatre in Corbin?

A. That is the first contract?

[fol. 541] Q. Yes, this is the contract dated November 25th, 1938.

A. That was the first contract.

Q. Did you have any negotiations leading up to that contract?

A. I had talked about that deal, yes, sir.

[fol. 542] Q. And with what representatives of the Schines had you discussed this matter?

A. Mr. Lazar.

Q. And about when with reference to the date of this contract had you had that discussion?

A. The contract was entered into and finally signed in New York City. I think that is the one Mr. McKay spoke of. It was agreed on at Gloversville. Just before we went to Gloversville we had a meeting in Lexington.

Q. Was that meeting in Lexington with Mr. Lazar?

A. I am not sure if he was there. I talked to him about it. I am not sure when I started for Gloversville whether he was there nor not.

Q. Mr. Scott, you say you operated the Margie Grand Theatre in Harlan, Kentucky, in 1938?

A. Yes, sir.

Q. About how long had you been operating that theatre?

A. Since 1932, to the best of my recollection.

Q. What has been your experience in respect to film rentals during that period?

Mr. Rogers: One moment. I object to that as incompetent, vague and indefinite and not having any bearing.

Mr. Marcus: Will the Court rule on that? I am merely asking Mr. Scott what his experience has been during the [fol. 543] period of operation of his theatre.

The Court: Experience may be calling for his conclusion.

Q. Had the film rentals gone up during that period?

Mr. Rogers: Where, what theatre, what kind of theatres?

Mr. Marcus: The Margie Grand Theatre, Harlan, I am talking about now.

The Court: He said he started in there in 1932; is that right?

The Witness: I think that is when I leased it.

Q. Answer the question.

A. Yes.

Q. Were the film rentals lowered after Schine took over the booking of the theatre?

Mr. Rogers: May it please the Court, I object to that.

The Court: Does it appear what theatres Schine had at Harlan?

Mr. Marcus: This contract has a provision making the Schines the booking agent for Scott in the Margie Grand Theatre in Harlan.

The Court: That is dated in 1938?

Mr. Marcus: That is dated in 1938, and I am now inquiring as to what occurred as to film rentals after this time, to show the comparison.

Mr. Rogers: Except for this, may it please the Court: As I understand the allegations of the complaint and the bill of particulars with reference to this particular situation, [fol. 544] the complaint is about conditions in Corbin and not conditions in Harlan.

Mr. Marcus: Harlan is another situation.

Mr. Rogers: There is no complaint made about the situation in Harlan.

Mr. Marcus: I think the best way to find that out is by looking at the complaint and the bill of particulars.

Mr. Rogers: Surely. Look at your complaint and bill of particulars.

The Court: Do you know whether the Harlan situation is presented in the complaint?

Mr. Marcus: Yes, it is your Honor.

Mr. Rogers: Yes, it is presented in the complaint, may it please the Court.

The Court: Then proceed. You are inquiring about Harlan now.

Mr. Rogers: We have not finished Corbin yet.

The Court: That does not go to the competency of the question.

Mr. Rogers: There is no allegation in the complaint that the condition in Harlan in any manner affected the conditions in Corbin.

The Court: That may not be. It may be competent to show the transaction with reference to this theatre at Harlan. The order of proof does not affect the competency of [fol. 545] the question. Go ahead.

By Mr. Marcus:

Q. Mr. Scott, I just asked you as to whether the film rentals decreased after the Schines took over the booking for the Margie Grand?

A. They decreased in this manner: As I recall, he was able to have the film companies rebate us when we had a picture that didn't come up to standard and didn't do business, which I was unable to get before. I know that to be a fact.

The Court: Did I understand that Schine took over the Margie Grand from you?

The Witness: Not at that time.

The Court: You said he had the booking of it?

The Witness: For one year he booked pictures for me while I owned the theatre, for one year, 1939.

The Court: What year was that?

The Witness: One year, 1939.

Mr. Marcus: If your Honor please, I would like to read into the record from Schine's answers to the interrogatories, which will clear up the question you just asked Mr. Scott.

The Court: Just ask the question. It is not necessary to do that.

Q. Mr. Scott, until when did you operate the Margie [fol. 546] Grand in Harlan, Kentucky?

A. Until January 1, 1940.

Q. After that who took over its operation?

A. Leon B. Scott.

Q. Up to the time you gave over your theatre to Mr. Leon Scott had the Schines acquired any interest in the theatre, aside from the booking contract?

A. No, sir.

Mr. Marcus: I am reading now from Schine's answer to interrogatory No. 17-A (page 16): "Name of town, Harlan. Name of theatre, Margie Grand. Nature of interest: Lessee. Extent of interest: 50%. Date acquired: January, 1941." Which, as your Honor will notice, is after the date——

The Court: A year after?

Mr. Marcus: Yes. "Other interests, if any, and extent thereof: Leon Scott, 50%."

That is all.

The Court: I didn't understand what you said about the reduction of prices there. You spoke about Schine being able to get pictures at some different price, reduced price. That is the substance of it, as I remember it.

The Witness: Yes, he asked if Schine saved me any money [fol. 547] by buying pictures for me.

The Court: Who asked you that?

The Witness: He asked me that in substance. I said by getting rebates from the film company. They would sell you a picture for $100, and if it didn't do what was justifiable Mr. Schine could get some of that money back.

The Court: Schine got you a rebate?

The Witness: Yes, sir.

The Court: Had you been buying before that of these same companies?

The Witness: Yes, I had used the same pictures. I had used the same company's pictures.

The Court: You mean by your answer, then, that Schine bought them cheaper than you were able to buy them—the same product?

The Witness: Yes, by getting rebates for me, yes, sir. I never could get a rebate through.

Cross-examination.

By Mr. Rogers:

Q. Mr. Scott, you made your deal with Mr. Owens some time in the fall of 1938; is that right?

A. Yes, sir.

Q. And at that time what was there on the site, the loca-
[fol. 548] tion, on which the Viv Theatre was ultimately built?

A. There was a building there that had different kinds of businesses in.

Q. You mean at that time it had different kinds of businesses?

A. Yes, sir.

Q. What businesses did it have?

A. I didn't even enter to see. Some of them even were vacant. The rooms were there—business buildings.

Q. Was part of it a garage?

A. The back of it, yes, sir.

Q. And it was the purpose of Mr. Owens to demolish the interior of that building, was it, and to build part of it into a theatre?

A. It was to be remodeled into a theatre, yes, sir.

Q. And the balance of it for stores?

A. I suppose that was his intention.

Q. Well, didn't you know?

A. I was only leasing the theatre, the theatre end of it.

Q. Weren't you interested in finding out how much space in that building the theatre would take up?

A. It was specified in the contract how many seats it was to have.

Q. Was it specified in the contract what kind of a building it was to be?

A. I can't say because I don't remember.

[fol. 549] Q. You just don't remember that, do you?

A. That is six years. After it was canceled I forgot it.

Q. Did you see a set of plans?

A. There was an architect in Barboursville. I think he had plans.

Q. Did you see the set of plans?

A. I wouldn't say.

Q. You can't remember, can you?

A. No, sir.

Q. Is that right?
A. I don't remember.
Q. Did you ever see a set of specifications?
A. For that building?
Q. Yes.
A. I couldn't be positive.
Q. In the fall of 1938 after you had made this contract with Mr. Owens had anything been done with reference to any work on that building that stood on the site of the present theatre towards demolition or anything else?
A. Personally I don't know.
[fol. 550] Q. When you went to Universal in the fall of 1938, you went there seeking product for a theatre that was not even in existence at that time, didn't you?
A. The building hadn't been built, no, sir.
Q. As a matter of fact, the theatre was not even in the course of construction at that time, isn't that right?
A. I had a lease and Mr. Owens was responsible.
Q. I know you had a lease. What I am trying to discover, Mr. Scott, is whether the theatre was actually, physically being built at that time?

Mr. Marcus: He already stated he didn't know.
The Witness: Well, personally I don't know.

Q. That's all I want to know. When was that theatre actually opened for operation, if you know?
A. I do not know.
Q. You don't know that, either, do you?
A. No, sir.
Q. It wasn't opened for operation during any of the time under which you had this so-called lease, was it?
A. It wasn't opened while I had the dealings.
Q. It wasn't open when you had the lease?
A. No.
Q. It was opened when your lease was cancelled?
A. Yes.
Q. When you went to Universal and had your talk there [fol. 551] with reference to product for this theatre, the theatre hadn't even been named yet, had it?
A. I named it.
Q. You had a name in mind for it?
A. I have to have a name to buy the pictures.
Q. You were going to call it the Roxy Theatre, is that right?

A. Yes, sir.

Q. And for what year's product were you talking to Universal, or what season's product were you talking about?

A. Current season's product.

Q. By that do you mean for the 1938-1939 season?

A. The contract will show.

Q. What I want, I want to get your recollection, Mr. Scott.

A. I don't remember all those things. I might have bought pictures two or three different seasons if they had them on hand.

Q. What I am trying to discover is what season's product were you discussing there?

A. First-run picture.

Q. For which season?

A. I don't know. I can't say positively. Of course, you have the contract in front of you.

Q. I would like to get your memory on what you said to this man.

[fol. 552] A. I can't remember that, six years ago, in detail.

Q. Do you mean to say you can't remember what product you were seeking for this theatre to be built in the fall of 1938, when you spoke to Mr. Paul Reiger?

Mr. Marcus: Your Honor, it is in evidence he made an application for that product and the season is mentioned in that application. I don't see what the purpose is.

Mr. Rogers: All very pretty, but I am trying to find out what the conversation was.

Q. Then you don't remember?

A. I don't remember whether I bought them.

Q. Pardon me, Mr. Scott, what I am trying to discover is when you spoke with Mr. Reiger of Universal, what season's product were you discussing with him?

A. I told you I might have been discussing more than one season's product if he had it open, possibly I bought more than one season.

Q. You mean you bought both 1938-1939 seasons?

A. I could have if it had been open.

Q. One moment now. How many years had you been in the motion picture exhibiting business before the fall of 1938?

A. 1921.

Q. Well, you knew, as an exhibitor experiences in buying [fol. 553] motion picture products first-run, that you had never discussed in the fall of 1938, the purchase of first-run products for the season 1939-1940, don't you?

A. I said 1939 and '40.

Q. You just said you might have been talking to him about products for the succeeding season.

A. No, prior.

Q. When you said succeeding, you were in error?

A. Preceding.

Q. I say when you said succeeding, you were in error. September first, 1938 to August 31st, 1939, was commonly known in the motion picture industry as the 1938-1939 season, wasn't it?

A. Yes sir.

Q. Was there any discussed as to when you would start playing this product?

A. Just as soon as the theatre was finished.

Q. Regardless of when it was finished, is that right?

A. Couldn't start until they had it finished.

Q. Don't you know as a matter of fact the theatre was not opened for operation in August of 1939?

A. I don't know just when it was opened, but it was opened in 1939. I also know that no doubt it was delayed on account of the trading leases and re-renting, you see, we cancelled our lease.

[fol. 554] Q. Regardless of what caused the delay, you know it was not opened until August of 1939, is that right?

A. Must have been.

Q. When you spoke to Mr. Reiger in the fall of 1938, didn't Mr. Reiger tell you that it was very difficult to talk about contracting product in a theatre that hadn't even been commenced to be built?

A. No, sir.

Q. He said nothing about that to you?

A. No, sir, he sold me his pictures.

Q. Did he ask you when the theatre would be opened?

A. I wouldn't doubt that he did. It was talked about.

Q. Do you recall?

A. We talked about it. I had to tell him like I told you, I didn't have anything definite just when we would get it through. We were hoping to get it through just as quick as possible.

Q. You gave him no date, did you, as to when the theatre would be completed?

A. The contract shows what I did.

Q. The contract doesn't say anything about when the theatre would be completed?

A. No, not about when the theatre would be completed. I thought you mean a date starting to play pictures.

Q. Look at Plaintiff's Exhibit P-19, and tell me if there is [fol. 555] anything in that contract as to when the theatre is to be completed?

A. No. I don't need to look.

Q. You say that in the fall of 1938, you went to Loew's, is that right, and talked about products for this theatre about to be built?

A. Talked to Mr. Booth at Metro-Goldwyn-Mayer's.

Q. You spoke with Mr. Booth?

A. Yes.

Q. Do you recall what that talk was with Mr. Booth at that time?

A. Mr. Booth said there was plenty of time to buy them later on.

Q. Mr. Booth said to you when you got your theatre finised that is the time to come in and talk about the product, didn't he?

A. That is what he said, yes.

Q. Then you went to Republic, didn't you?

A. Yes.

Q. And they sold you product?

A. Yes.

Q. For the 1938-1939 season?

A. My best recollection, yes, sir.

Q. And you went to Monogram, didn't you?

A. Yes.

[fol. 556] Q. And they also sold you product for the 1938-1939 season, right?

A. Yes, sir.

Q. And Republic sold you first-run and Monogram sold you first-run, didn't they?

A. Yes, sir.

Q. With reference to Republic first-run product, you considered that very good product for a theatre of the kind that was being contemplated in Corbin, didn't you?

A. All right for Saturday pictures.

Q. Pardon?

A. They had Westerns, action pictures.

Q. You considered that good product for that house, didn't you?

A. For Saturday, any house, almost.

Q. As a matter of fact, they had Gene Autry, didn't they?

A. Yes.

Q. Gene Autry was a very popular screen hero, wasn't he?

A. Yes.

Q. And in your other towns near there where you played Republic product, you found your audiences were really very pleased with that product, didn't you?

A. I didn't play Republic in any other towns.

Q. You mean you did not play Republic in your other towns?

A. Not at that time.

[fol. 557] Q. Did you ever play Republic in your other towns?

A. May have run second-run. They always sold to the opposition house.

Mr. Wright: If the Court please, there isn't any question in the suit whatsoever in respect to Republic or Monogram. The complaint is limited to the eight major companies. I don't see what the purpose of this is.

Mr. Rogers: May it please the Court, it seems to me the plaintiff can't blow hot and cold and on his direct examination interrogate this witness about Republic and get his testimony in.

Mr. Wright: He was asked what efforts he made to get products, and he volunteered, he went in and talked with Republic and Monogram.

The Court: Objection overruled.

Q. Monogram was good product for that theatre, too, was it not?

A. I didn't consider it so.

Q. You bought it?

A. Because I couldn't get anything else.

Q. You went to get it?

A. Couldn't get anything else.

Q. You went to get it?

A. Yes.

[fol. 558] Q. And you bought it, didn't you?

A. Yes.

Q. For that type house, didn't you regard Moongram as good product?

A. No, sir.

Q. But you did regard Republic as good product?

A. I did. Gene Autry.

Q. As a matter of fact, you did better with Republic——

Mr. Marcus: He never used Republic in Corbin.

Q. You never used Republic in Corbin at any time?

A. Except second-run in my house.

Q. Which house did you play it?

A. It has been played in the Monogram.

Q. What other house did you play it at?

A. Been played second-run in the Liberty.

Q. You did good business with it there?

A. I don't recall now.

Q. What?

A. Naturally do better if we had them first-run.

Q. But you did good business with them, too, second-run, didn't you?

A. Fair.

Q. You testified that when the Schine people took over the booking of the Margie-Grand Theatre that they were able to save money on pictures, because they got adjust-[fol. 559] ments, is that right?

A. Yes, sir.

Q. It wasn't unusual in the moving picture industry for a house after it played a picture and found it played very badly, to go to the distributors and ask for adjustments, isn't that right?

A. You asked, but never got it.

Q. It wasn't unusual to ask, was it?

A. No.

Q. And when Schine came in and helped you book your theatre, the Margie-Grand Theatre, you say they did get adjustments after pictures played that did not get good results?

A. Yes, sir.

Q. And you got the benefit of those adjustments, didn't you?

A. Yes, sir.

Q. By the end of the fall of 1938, can you give us an idea of how many pictures you had actually contracted for to

be played in that Corbin Theatre which was about to be built?

A. No, sir, I couldn't tell you. I don't remember.

Q. Could you tell me approximately how many?

A. No, sir.

Q. Haven't any idea, have you?

[fol. 560] A. Republics and Monogram.

Q. About how many?

A. The only two I remember. I don't know.

Q. Was it more than one hundred?

A. I don't know.

Mr. Rogers: That is all.

[fol. 561] Redirect examination.

By Mr. Marcus:

Q. Mr. Scott, was it after your agreement with the Schines that your contract with Mr. Owens was cancelled? Did that occur after your agreement with Schine?

A. I don't recall. That all happened there so close I don't remember.

Mr. Marcus: At this time, your Honor, I would like to read into the record Schine's answer to No. 15 of the Government's interrogatories. I will just read part. This answer relates to that agreement, more particularly in respect to the Margie Grand Theatre, Harland, Kentucky. "The other 50% of the stock of the Phoenix-Harlan Theatre Company was owned by Leon Scott, the former operator of the theatre, and as further consideration Mr. Scott was given an employment contract."

Mr. Rogers: Do you mean Mr. Leon Scott?

Mr. Marcus: Yes. There is only one other thing I would like to call to your Honor's attention and that is that this contract provided that Schines would get 5% in return for their booking services.

The Court: You mean 5% of the gross of 5% of what?

[fol. 562] Mr. Marcus: I believe it was 5% of the gross, Was it not, Mr. Scott?

The Witness: Yes.

By Mr. Marcus:

Q. Mr. Scott, in that contract was there also a provision against your competing for a certain time?

Mr. Rogers: One moment, if the Court please. It is in the contract. Is the contract in evidence?

Mr. Marcus: The contract is in evidence, your Honor, but we are in the unfortunate position of having a page or two missing.

Mr. Rogers: I understood there was only one page missing. Isn't that right?

Mr. Marcus: I don't know. The page at which the contract stops, as we have it now, is page 4. Whether there is one or two pages I don't know. That is the contract of December 2, 1938. It apparently is the contract of November 30, 1938. At any rate, that is one of the contracts you are looking for?

Mr. McKay: Yes, I am looking for it.

Mr. Rogers: As far as you go with that contract is the clause contained in that contract——

Mr. Marcus: Your Honor, what I would like to prove from this witness is that in the event that the Schines do [fol. 563] not produce that contract that there was such a provision in the contract.

The Court: Does it appear in the pages that are in evidence?

Mr. Marcus: No, it does not, your Honor. There is a page or two of that contract missing.—

Mr. McKay: Your Honor, this morning he said it was one page. Now he says it is two pages.

Mr. Marcus: What difference does that make? I don't know how many pages. I know there are pages missing.

Mr. McKay: Where did that come from?

Mr. Marcus: That came from Mr. Leon Scott, who brought it to our office on Saturday.

The Court: You are referring to the contract of Scott with Schine?

Mr. Marcus: That is right. We have reason to believe that there was a provision providing that Mr. Scott was not to compete with the Schines in Corbin for a certain period of time.

Mr. McKay: I do not think that is a proper statement for Counsel to make. He says, "We have reason to believe." Where is the contract? Why do you say you have reason to believe? You have no basis for that statement.

Mr. Marcus: We have an affidavit from Mr. Scott in [fol. 564] which that is stated.

The Court: The Schines must be reasonably expected to have a copy of the contract.

Mr. McKay: We should have it, but I want to find out that the first request for this was made at 10 o'clock this morning. That certainly is not a very timely request, but we are not going on that; we are going to do the very best we can to find it.

The Court: I suppose one matter is the convenience of the witnesses?

Mr. Marcus: That is the main thing. Mr. Scott would like to leave for Kentucky tonight. Your Honor, can it not be taken and then see whether or not they are able to produce the document? If they are able to produce it then that, of course, will be the best evidence. If they are not——

The Court: It may have a bearing here and they are entitled to cross-examine him.

Mr. Marcus: Certainly, they can cross-examine him if he makes that statement. Your Honor, that is a document they are supposed to have.

Mr. Rogers: We are supposed to have it if you will give us reasonable notice to produce it.

[fol. 565] The Court: You should have served notice before.

Mr. Wright: We did not know, if your Honor please, that the witness was going to turn up with an incomplete agreement. He gave us an affidavit saying he had agreed not to compete for a certain period of time. We assumed that would be contained in the document we subpoenaed from him. Then he brings in a document part of which is missing.

The Court: I supposed from your investigation you would find out what that document was.

Mr. Rogers: As a matter of fact, we were never served with a notice to produce.

The Court: Objection sustained.

Have you not got someone who can be looking up your records to see whether you have that copy? It seems to me you ought to be able to tell us promptly whether you have or have not.

Mr. Wright: Certainly, they can tell us right now whether they did or did not make an agreement with Mr. Scott for him to compete in that area. If they did there is not any point in wasting time; if they claim they did not

and they can't produce the contract then we are entitled to [fol. 566] his testimony to the effect that he made such an agreement.

Mr. Rogers: We are not on the stand.

The Court: Objection sustained.

Mr. Marcus: Your Honor, will you direct the defendants to make their inquiries by tomorrow, so that we may be able to put Mr. ——

The Court: I do not see why it is very troublesome to report promptly on whether you have these agreements. Someone must be familiar with your papers and could tell us very quickly whether you have copies or haven't them.

Mr. McKay: We are doing it just as diligently as we can, your Honor, and I undertake just as soon as we get back this afternoon that that will be our first order of business, the minute we get back to the hotel this afternoon.

Mr. Wright: I mean so that we can release Mr. Scott today.

Mr. McKay: I can't do anything better than that, can I? I am going to go to work myself, and I will ask Mr. Antevil to work with me and try to find that paper.

Mr. Wright: An affidavit was made in 1939 to the effect that he had such an agreement. In five years I would have thought somebody in the Schine Company would have made [fol. 567] an investigation to determine whether there was——

The Court: The Government should have been able to determine that after this case had been running for six years.

Mr. Wright: We assumed when he gave us an affidavit to that effect that that was in the agreement.

The Court: I should think you would want to see what was in the agreement yourself.

Mr. Marcus: That is all, Mr. Scott.

Recross-examination.

By Mr. Rogers:

Q. This Plaintiff's Exhibit 20, the booking contract as between yourself and Schine, to book this theatre, provided for five per cent of the gross; isn't that right?

A. Yes, sir.

Q. Was it customary in the industry at that time that where you engaged the services of another exhibitor com-

pany to do the booking that that company got a percentage of the gross for booking services?

A. I don't know if it was customary or not. I only had one other arrangement.

By the Court:

Q. Do you know anything about it further than your own [fol. 568] cont-act?

A. Further than my own business I don't know whether it was customary or not, but I had an arrangement prior to Mr. Schine, but I didn't pay a percentage.

By Mr. Rogers:

Q. You didn't regard a five per cent booking fee as an excessive booking fee, did you, for booking that house for you and saving you money, as you say?

A. I said they got some rebates for me. I didn't say that the rebates exceeded what I paid them.

Q. Whether it exceeded them or not, those rebates saved you money, didn't they? They did, didn't they?

A. They never saved me any money in excess of what I paid them.

Q. Please answer my question. They did save you money, didn't they, those rebates, so-called? That calls for a yes or no answer. It did save you money or it didn't save you money. Now, which is it?

A. I didn't consider it saved me money.

Q. You didn't consider it saving money?

A. The deal was five per cent.

Q. I am not talking about five per cent, or any other per cent. I am merely asking whether the obtaining of those rebates for you did or did not save you money?

A. I didn't consider it so.

[fol. 569] Mr. Rogers: That is all.

Mr. Marcus: That is all. Will you remain here until tomorrow?

The Court: Call the next witness.

Mr. Rogers: Is Mr. Scott to be regarded as still on the witness stand, Mr. Marcus?

Mr. Marcus: Merely for the purpose of calling him back as to that provision of the contract, in case you do not produce your copy.

Mr. Rogers: Then he is still on the witness stand?

The Court: Yes.

Mr. Rogers: I want to be sure that that is so, because I have some motions to make and I do not wish to make them until we are finished with the testimony of Mr. Scott.

MITCHELL K. MURPHY, a witness called by and on behalf of the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Marcus:

Q. Mr. Murphy, where do you reside?

A. I live at Big Stone Gap, Virginia.

Q. What is your occupation?

A. Well, I am in the theatre business and performing. [fol. 570] Q. How long have you been in the theatre business?

A. Well, about 32 years.

Q. Can you name some of the theatres in some of the places in which you have operated?

A. Well, Welch, West Virginia; Bluefield, Keystone, War, West Virginia, Appallachia, Virginia, Big Stone Gap, Flintwood, Norton, and Gates City.

Q. Did you become interested in operating a theatre in Corbin, Kentucky, in 1939?

A. Yes, sir, I started in 1939.

Q. Did you enter into an agreement with Mr. Owens in respect to that theatre?

A. Yes, sir.

Q. Do you recall the date of that agreement?

A. I made the contract with Mr. Owens, I believe, on the 19th day of May, 1939.

Q. Did you attempt to get product for that theatre, film product?

A. Yes, sir.

Q. About how soon after making this agreement with Mr. Owens did you make your first attempt?

A. Well, I believe it was on my same trip down there.

Q. Where did you go?

A. I went to Cincinnati.

Q. Did you call on the various film exchanges in that city [fol. 571] for that purpose?

A. Yes, sir, all of them.

Q. You called on all of the film exchanges?

A. Yes, sir.

Q. Can you tell the Court what product you were seeking on this occasion? Was it first run or second run or any other run?

Mr. Rogers: Pardon me. May it please the Court, I maintain that that calls for a conclusion and I think we are entitled to the testimony of this witness as to the occurrences, the dates and the persons, and what he did, not what he had in his mind.

The Court: He can give the talks he had with individuals.

Q. Do you recall calling on the Fox Exchange in Cincinnati for product?

A. Yes, sir.

Q. Will you tell the Court with whom you spoke there in respect to film products?

A. I spoke to the General Manager, the General Branch Manager.

Q. Do you know his name?

A. No, I don't remember his name.

Q. What was the substance of your conversation with him at that time?

Mr. Rogers: One moment. May it please the Court, I do [fol. 571a] object to this conversation unless the witness can give us the name of the man or identify him in some manner.

The Court: Had you dealt with this man before?

The Witness: Well, I dealt with the Fox Film Company, not this particular man. It seemed to be a different man than what used to be there when I had theatres in West Virginia.

Mr. Rogers: Then, may it please the Court, I do object on the ground that the man whom he claims he spoke to is not identified at all. His authority is not even presumptively spelt out here.

By Mr. Marcus:

Q. Mr. Murphy, when you called on this Exchange for whom did you ask?

A. I asked for the general manager.

Q. Was there a designation on the door of the office of this person with whom you spoke, do you recall?

A. Well, I am not sure.. Some of them I went in their offices and some of them came out to see me and talk to me.

Q. The question I just asked you, Mr. Murphy, was whether there was anything to indicate the position of the individual with whom you talked on the outer office?

[fol. 572] A. The offices I went into, of course, had "Branch Manager" on it, and so forth.

Q. Could you relate the substance of that conversation you had?

Mr. Rogers: I object on the ground that the person has not been identified nor has his authority been established.

Mr. Marcus: Mr. Murphy has testified that he called on that Exchange, asked for the district manager and spoke to a person to whom he was directed as the district manager.

Mr. Rogers: He merely said he walked in there, and he said there was some name, the general sales manager or some such thing, on the door.

The Court: Were you directed to someone to see?

The Witness: Yes, sir.

The Court: Where were you directed?

The Witness: Directed into the office by the girl who was supposed to give you information, and so forth.

The Court: What did she do?

The Witness: Well, she was a bookkeeper or handled the 'phones, and at times she would call the manager and tell him that so-and-so was there to see him.

The Court: We are asking about this particular time.

[fol. 573] The Witness: I suppose that that is about the case there. The manager was called and I went in to see him.

The Court: Not what you suppose about it. Did she call somebody or direct you to somebody?

The Witness: She called somebody.

The Court: Called for whom?

The Witness: Whoever it was. I don't remember the name. I asked for the general manager.

The Court: Then what happened?

The Witness: Well, I went in to see him and asked him about the product, and he just simply told me——

Mr. Rogers: Pardon. Again I object on the ground that there has been no proper foundation laid.

The Court: I will let him answer. Overruled. You said you went into a girl. Did the District Manager come into that room or did you go to another room?

The Witness: I went to his room. She called him and he told her to send me in.

Mr. Rogers: May it please the Court, this objection is not merely a pro forma or technical objection. If we are going to meet this testimony we have the right to know who the man was he spoke to. Otherwise how are we going to rebut it? We couldn't possibly rebut it.

[fol. 574] The Court: I will receive it. Overruled.

By Mr. Marcus:

Q. Will you tell the Court what the substance of your conversation with this manager of Fox was, Mr. Murphy?

A. Well, he told me Mr. Schine had first runs bought in Corbin.

Q. Do you recall calling on the branch office of Metro in Cincinnati at this time, Mr. Murphy?

A. Yes, sir.

Mr. Rogers: May we have the date? We haven't had the date fixed as to when he saw this man at the Fox Company, as he claims.

Q. About how soon after entering into this contract with Mr. Owens did you look for product, go to Cincinnati for product?

The Court: He has answered that. He said immediately after we made the contract in May, 1939, he went to Cincinnati.

Mr. Rogers: He said the first trip he made to Cincinnati was after that.

The Court: How is that?

The Witness: I made the trip at the same time that I made the contract for the theatre, and I should judge that would be about the 20th or 21st day of May, 1939.

The Court: That is the time you saw these men, you claim?

[fol. 575] A. Yes, sir.

By Mr. Marcus:

Q. Who did you see at the branch office of Metro in Cincinati wth respect to product for this theatre, do you recall?

A. For first runs?

Q. Yes.

A. That was the same time, about the 20th or 21st of May.

Q. Do you recall whom you saw at the Exchange? This is Metro.

A. I saw Mr. Booth.

Q. What was Mr. Booth's position? I merely want to find out what office did he hold.

Mr. Rogers: Pardon me for a moment. Again I object.

The Court: Maybe you can show his contact with Mr. Booth before this.

The Witness: I knew Mr. Booth personally. I had known him for sometime—several years. I had dealt with him there.

By Mr. Marcus:

Q. Had you known him as the branch manager of Metro in Cincinnati?

A. Yes, I did know him.

Q. What was the substance of your conversation with Mr. Booth on this occasion, with respect to first run product?

A. He told me Mr. Schine had all the first runs bought and I asked him if he had even his shorts and things of that [fol. 576] kind bought, and he said he did. He said he didn't have anything open for me.

Q. Do you recall calling on the Paramount branch office in Cincinnati on this occasion?

A. Yes, sir.

Q. In respect to the product of this theatre?

A. Yes, sir.

Q. Do you recall the name of the person you saw there in respect to this product?

A. Well, I don't know the names there. I just went in and asked for the manager and I was directed to him and I talked with him.

Q. Had you had any dealings with this person you talked to prior to this time?

A. I had with the company for several years but not that particular manager. They had changed managers since I had been there.

Q. But you were directed to him as the manager?

A. Yes, sir.

Q. Now, Mr. Murphy, what was the substance of your conversation at the Paramount Exchange with this person to whom you were directed as Manager of the Exchange?

Mr. Rogers: May it please the Court, I object to it on the ground that no foundation has been laid. The person [fol. 577] he spoke to has not been even sufficiently identified, nor has the authority of that person been shown, or the identify of the person revealed.

By the Court:

Q. Had you dealt with Paramount for some time?

A. Yes, sir.

Q. Through this office in Cincinnati?

A. Yes, when I was in West Virginia I got my service out of Cincinnati. Since I went to Virginia I got it out of Washington. During the ten or eleven years I had been in Virginia I had forgotten those persons down there. In lots of places the managers had been changed. In fact, about all of them.

Q. How long prior to this time you went to Paramount had you been there?

A. Well, I would say ten or eleven years.

The Court: I will receive it.

By Mr. Marcus:

Q. What was the substance of your conversation with the manager of the Paramount Exchange in Cincinnati at this time?

Mr. Rogers: Pardon me. I object to the form of the question. I suggest the form be, what was the nature of the talk you had with the person you spoke to.

[fol. 578] The Court: Was the individual with whom you talked at Paramount?

Q. What was the substance of your conversation?

A. He just told me that the Schine-Circuit had the first runs bought.

Q. Did you call on the branch office of Warner Bros. at Cincinnati on that occasion with respect to first run film product for this theatre at Corbin?

A. Yes, sir.

Q. Do you recall the name of the person with whom you spoke there?

A. That was Johnnie Iffert.

Q. Had you had dealings with this individual prior to that time?

A. Yes, I had had. He used to be salesman for Warner before he was manager, and I bought from him as salesman, and I talked to him at this time as manager.

Mr. Rogers: Pardon me. May it please the Court, if this is to be binding at all on the ground that the person he spoke to was manager, this witness said he never had any dealings with this man as manager before that.

The Court: He identifies him as the man with whom he dealt at this time.

Mr. Rogers: But that is not evidence of either the man's [fol. 579] position or of his authority.

The Court: What do you know about his position at that time, whether he was the manager?

The Witness: He told me he had been——

The Court: How did you contact him?

The Witness: I think I just walked in and his office was visible, there was no partition or anything there, and I knew him well enough to say something to him. He just invited me in.

The Court: I mean about his being branch manager.

The Witness: We talked awhile and he told me he had been made branch manager.

Mr. Rogers: I move to strike that.

The Court: Yes.

Mr. Rogers: They cannot prove his agency out of his own mouth.

The Court: Sustained.

Mr. Marcus: Your Honor will recall that we have told the Court we will connect up the positions of all these individuals. He has named the particular individual.

The Court: Well, objection overruled. Proceed.

Q. What was the substance of your conversation with Mr. Iffert?

A. Well, I told him I had the Corbin Theatre and he told me he was sorry that he couldn't do anything for me, [fol. 580] that the Schine Circuit had their product bought. I asked him if they had their short subjects bought too and he said they did.

Q. Now, Mr. Murphy, did you call at that time at the branch office in Cincinnati of R. K. O. in respect to product for this theatre in Corbin?

A. Yes, sir.

Q. Do you recall with whom you spoke there in respect to getting product?

A. I don't know his name. I only asked for the manager and I was directed to him.

Q. Had you had any dealings with this individual prior thereto?

A. Not that particular manager. I had with the office ten or twelve years prior to that.

Q. Now, Mr. Murphy, what was the substance of your conversation with this individual with R. K. O.?

Mr. Rogers: Now, may it please the Court, I do object to this on the ground that this cannot by any possibility connect this possibility with anybody in authority. Here is a man who says he hadn't had any contact for twelve years with the company. He walks in here, here is a man he had never seen before. Not only haven't they [fol. 581] connected it but it is patent they can't possibly connect it.

By Mr. Marcus:

Q. Did you have any other occasion to go to the office of R. K. O. in Cincinnati subsequent to this first occasion?

Mr. Rogers: Pardon me. May it please the Court, that certainly is incompetent. Subsequent events can't possibly prove the existence of a state of facts that exists prior to the happening of the subsequent event.

The Court: It may be part of the subsequent event. It is competent to show that he went there at another time. Did you go there to R. K. O. again?

The Witness: Yes, sir.

The Court: How long was that after this first time?

The Witness: In fact I went to all of them several different times.

The Court: This is R. K. O.?

The Witness: R. K. O.

The Court: Who did you see the second time?

The Witness: Well, I saw the same man that I was directed to be the manager when I was there the first time. [fol. 582] Q. Mr. Murphy, will you relate the substance of your conversation on this first occasion with this man at R. K. O.?

Mr. Rogers: Again I object to it on the ground there is no certain fact what person, no evidence of authority, no proper foundation laid, and on the further ground it is impossible for the Plaintiff to ever connect an unknown party as a party in authority.

The Court: Well, of course, the defendant has to be connected with the individual to bind the defendant.

Mr. Marcus: Your Honor, this does follow in each occasion when he went to the R. K. O. branch office, he was directed to the same person as Branch Manager whom he saw on this first occasion. I do think that has probative value.

The Court: It is the same event. I am going to receive it anyway at this time.

Q. What was the substance of your conversation at that time in R. K. O.?

A. On the first-run?

Q. Yes.

A. Well, he just told me it was sold to the Schine Circuit, he couldn't do anything for me.

Q. Mr. Murphy, on that same occasion, did you call at [fol. 583] that Columbia Branch Office at Cincinnati in respect to getting product for this theatre in Corbin?

A. Yes, sir.

Q. Whom did you speak to there, do you recall his name?

A. No, I don't recall his name. I just asked for the Manager, and I was directed to him, and our conversation was very short. He just told me——

Mr. Rogers: One moment please. We haven't come to that yet.

Mr. Marcus:

Q. Did you have any further occasions after this first occasion to go to the Columbia Branch Office in Cincinnati, after this first occasion, did you go again to that office?

A. Yes, sir.

Q. And on these other occasions were you directed to that same individual as Branch Manager as the individual you saw on the first occasion?

A. Yes, sir.

Mr. Rogers: Can we get the date of the second occasion, please?

Mr. Marcus: I am coming to that, Mr. Rogers.

Q. Now, Mr. Murphy, you stated the substance, or did you state the substance of your conversation with that gentleman at that time, with respect to first-run product?

[fol. 584] Mr. Rogers: Columbia?

Mr. Marcus: Yes.

Mr. Rogers: No, he hasn't, either first or second visit.

Q. On this first occasion that you stopped at the Columbia Branch Office in Cincinnati looking for first-run product for Corbin——

Mr. Rogers: One moment. I object to the form of that question.

Mr. Marcus: He stated on the first occasion.

Mr. Rogers: Never mind what he stated. Please don't interpolate facts into the witness' mouth. Find out what they said and what he said.

Mr. Marcus: Make your objection.

Mr. Rogers: I have made an objection.

The Court: What was said between you and the man you talked with?

Mr. Rogers: I object to that on the ground no foundation has been laid, that the authority has not been established and that it is utterly immaterial and not binding on these defendants.

The Court: Overruled.

The Witness: He told me—that is the first-run you are talking about now?

Mr. Marcus: That is right.

[fol. 585] The Witness: He told me the Schine Circuit had the product bought.

By Mr. Marcus:

Q. Mr. Murphy, did you make another and subsequent trip to Cincinnati to try to obtain second-run product for your theatre in Corbin?

A. Well, I tried to obtain second-run from Metro-Goldwyn, Fox, Paramount, R. K. O., Columbia, Universal, United Artists, Republic, had got second-run from Republic, Warner Brothers.

Q. Let us take them up one by one, Mr. Murphy. On this second occasion when you came to Cincinnati, did you call at the branch office of 20th Century-Fox in respect to getting second-run product for Corbin?

A. Yes, sir.

Q. Did you speak to the branch manager there in respect to——

Mr. Rogers: Will you give us the date, please, Mr. Marcus, on this Fox visit.

Q. About how soon after the first time you went to Cincinnati did you go to Cincinnati to look for second-run product, do you recall, Mr. Murphy?

A. Well, I would say it was about ten days. I went back home, not back to Corbin, but home and in about ten days I went again with the intention of buying my equipment, like chairs and carpet and machinery, and so forth, if I [fol. 586] could buy second-run pictures.

Mr. Rogers: May we have stricken from the record what the mental operations of this witness were?

The Court: It was not responsive to the question, just "ten days after" you went back to Fox?

The Witness: Yes, sir.

Q. What was the substance of your conversation with the manager there in regard to getting second-run product?

A. Well, he told me that the Schine Circuit also had second run bought.

Q. What was the substance of the conversation you had in respect to getting second run products at the branch office of Metro with the Branch Manager at that time?

Mr. Rogers: May it be understood that this testimony is likewise taken to the same objection previously made.

The Court: He met Mr. Booth there.

The Witness: I saw Mr. Booth there. I saw Mr. Booth at the Metro Branch Office, and he came out in the lobby quite a little while, and kind of kidded me along. I used to play all of the product and played it up so close, he was kind of kidding; he told me he was going to bring a suit against me for a couple of shorts I failed to pick up. I said, [fol. 587] "Maybe I can pick them up now and save the suit." Also I went along to ask him if he could let me have some shorts there and he said he couldn't. He went on to say, Mr. Booth did, at the same time that Schines was their account and so far as Metro was concerned, that I wouldn't get first or second run in Corbin. I might as well make up my mind that way.

Q. What was the substance of your conversation at that time with the Branch Manager of Paramount Exchange in respect to getting second-run product for your Corbin theatre?

A. Well, the Paramount Manager——

Mr. Rogers: One moment, now. Is this the same man he did not know?

Mr. Marcus: I suppose so.

Mr. Rogers:

Q. This is the same man you did not know?

A. Yes.

The Court: Is he the same man you saw the first time?

The Witness: Yes, sir, the same man I saw the first time.

The Court: All right.

Mr. Rogers: I assume then this is taken subject to my objection?

The Court: Yes. This must be the Paramount.

[fol. 588] Mr. Marcus: Yes, sir.

The Court: What did he say?

The Witness: He said he didn't have any second-runs for me at all, that they were sold to the Schine Circuit and in every instance where that firm had short subjects, I also asked about shorts. Paramount told me they didn't even have shorts.

Q. Mr. Murphy, do you recall the substance of your conversation with the Branch Manager at the Warner's Cincinnati Exchange on that occasion in respect to getting second-run product for the Corbin theatre?

A. He told me Mr. Shine had the second-run bought, but he had some real old ones like some stuff over five years old, or some stuff he might be able to pick up occasionally for me.

Mr. Rogers: May we have with whom he spoke at that time?

By Mr. Marcus:

Q. Did you——

Mr. Rogers: Just ask him with whom he spoke.

Q. Is Warner's Exchange one of those where you do not remember the name?

A. No, I remember that. I know the manager at Warner Brothers, Tiford.

Q. Mr. Murphy, do you recall the substance of your con- [fol. 589] versation with the Branch Manager at R. K. O.?

A. Yes, sir.

Mr. Rogers: We haven't got Warner's yet. We haven't got the conversation with Warner's yet.

Mr. Marcus: Yes, we have that.

Q. Mr. Murphy, do you recall the substance of your conversation with the Branch Manager at R. K. O. in Cincinnati on that occasion with respect to getting second-run product?

A. Yes, sir, he told me that the Schine Circuit had the second-run bought.

Mr. Rogers: Was this the same man whom he doesn't know?

Mr. Marcus: The same man, yes.

Q. Now, Mr. Murphy, did you call at the Columbia Exchange in Cincinnati on that occasion with respect to getting second-run product?

A. Yes, sir.

Q. For the Corbin theatre?

A. Yes, sir.

Q. Did you get second-run product from Columbia?

A. I got a few. I got a contract on '37 and '38, but that was with the understanding that I couldn't run any of

that product until I had picked up a few older ones, and I am not sure but what I got a contract at that same time on '38-'39 product with the understanding that it must not [fol. 590] be run the same year that the Schine Circuit run. In other words, it must be a year or two years old.

Mr. Rogers: May it please the Court, I move to strike that on the ground they both relate to written contracts, and the contracts are the best evidence of what the conditions of those contracts were.

The Court: Yes.

Q. Mr. Murphy, you have just stated that these contracts of film were conditioned upon your not playing these pictures?

Mr. Rogers: Pardon me. May it please the Court, that evidence has been stricken out.

Mr. Marcus: I want to develop something.

Mr. Rogers: Please don't develop your question on evidence that is not in the record.

Q. Mr. Murphy, do you recall whether that was part of the written contract that you made?

Mr. Rogers: Again may I press my objection on the ground Mr. Marcus may not frame his question that way?

The Court: Sustained. The contract would show.

Q. Mr. Murphy, at the time you made your lease for the theatre in Corbin, what other theatres, if any, were being [fol. 591] operated in Corbin?

A. There were two in Corbin, the Hippodrome was the best one and a little house, the Kentucky.

The Court: In Corbin?

The Witness: Yes.

Q. Who was operating those theatres at that time?

A. The Schine Circuit.

Q. Do you know who was operating those theatres prior to the time that Schine began to operate them?

A. I don't know.

Q. Mr. Murphy, you have stated that you went to Cincinnati looking for first-run product and on another occasion you went to Cincinnati looking for second-run product? Did you attempt to get second-run products on any other occasion?

A. Yes, I tried several times before I ever got enough to open with. In fact, I paid $520 rent before I ever could get a picture to open with.

Mr. Rogers: May it please the Court, I move to strike the entire answer as not responsive.

The Court: Strike it out, it is not responsive to your question. You made several other attempts?

The Witness: I did. I made at least two more efforts after that before I ever bought my equipment.

[fol. 592] Q. Did you get any current second-run product for your theatre?

A. No, sir.

Q. Did you at any time while you were operating your theatre have first-run product from any of the major distributors?

Mr. Rogers: Pardon me. May it please the Court, none of these dates are fixed that Mr. Marcus is interrogating about.

Mr. Marcus: I asked him at the time he operated the theatre.

Mr. Rogers: You haven't stated the time he operated the theatre.

Mr. Marcus:

Q. You state you made a contract with Mr. Owens on May 19th, 1939, in respect to operating a theatre at Corbin. When did you seek to operate that theatre?

Mr. Rogers: When did he start to operate the theatre is more important.

Mr. Marcus: I am coming to that.

Mr. Rogers: Let us get the start before you get the end.

The Court: The contract was in May. When did you start to operate?

The Witness: I started paying rent on the 15th of June, and I opened the house on the 7th of August.

Q. You were paying rent during that time that the house [fol. 593] was opened?

A. Yes, sir. In my contract I was to start the rent when the house was ready. The house was not finished yet when I made the lease, and he notified me that the house would be ready for me on the 15th of June, 1939, and I started

paying rent then, and I paid rent up to the 7th day of August, before I could ever get anything to open with.

The Court: Why did you have to pay rent? You said during a certain time you wouldn't have to pay rent until it was finished.

The Witness: He notified me he had it ready on the 15th of June.

The Court: But he did not have it ready?

The Witness: Yes, sir, it was ready.

The Court: It was ready on the 15th of June?

The Witness: Yes, sir.

By Mr. Marcus:

Q. Mr. Murphy, when you state that Mr. Owens had the building ready on June 15th, 1939, was that true with respect to the equipment in the theatre?

A. Didn't have the equipment in at that time. I didn't know yet whether I was going to get pictures or not.

Q. Just answer my question. The equipment was not in at that time?

[fol. 594] A. No, sir.

The Court: When did you put the equipment in?

The Witness: I put the equipment in just before I opened on the 7th of August, but I had—we gave the order for the equipment right away after I leased the building.

Q. Mr. Murphy, were you to put in the equipment in the theatre?

A. Yes, sir.

Q. Mr. Murphy, do you recall with what picture you opened up?

A. I think it was a little feature from big feature rights, a real old one, perhaps several years old. I believe, "Cover Girl" was the name of the picture.

Q. Mr. Murphy, do you recall the approximate date when you disposed of your theatre to the Schines?

A. Well, it was about March, somewheres around March, the last of March, 1940.

Q. During that period of operation by you, had you been able to obtain any current first-run or second-run product?

Mr. Rogers: One moment. I object to that as calling for a conclusion, and we are entitled to the evidence.

The Court: What did he do?

[fol. 595] Q. Had you played any current first or second-run?

Mr. Rogers: That is immaterial.

Q. Had you played any current first-run or second-run product in Corbin during the period of your operation?

Mr. Rogers: That is immaterial.

The Court: You asked if he did run any, you say?

Mr. Marcus: That is right.

The Court: Let him answer that. Did you play any current first or second-runs?

The Witness: I didn't run any current stuff, no, all old stuff.

Q. Do you recall discussing with Mr. Owens being released from your agreement with him in respect to that theatre?

A. Yes.

Mr. Rogers: I object to that as immaterial and not binding on the defendants.

The Court: Sustained.

Q. Mr. Murphy, do you recall the admission prices charged by the Viv while under your operation?

A. 15 cents, 15 cents adults and 10 cents children.

Q. Was that for matinee and evening?

A. Yes, sir.

Q. Do you recall whether or not there was an increase in the prices charged at the Viv Theatre after you disposed of your theater to Schines?

[fol. 596] Mr. Rogers: One moment. Let's see whether or not he knows anything about it, first.

Mr. Marcus: I asked him.

Mr. Rogers: Let us find out. That calls for a conclusion.

The Court: Do you know what the prices were?

The Witness: I know what they were one day when I was in there, that's all I know.

Q. You went into the theatre after the time you had sold it, is that right?

A. Yes, sir.

The Court: Didn't it appear you retained a part in it?

Mr. Marcus: No, that was Scott, your Honor.

The Court: All right. When was that?

The Witness: That was some time in 1940. I would say just a few months after I sold.

The Court: Did you ask what the prices they were charging then?

The Witness: 30 cents is what I paid.

Q. Mr. Murphy, do you know what prices were charged at the Hippodrome in Corbin at the time you took your lease from Mr. Owens on your theatre in Corbin?

A. I think it was 25 cents.

Q. Was that for matinee and evenings?

A. I don't remember for sure about that. I kind of think it was, though.

[fol. 597] Q. Do you know whether in the Hippodrome there was a balcony and an orchestra?

A. Yes, there was a balcony.

Q. Did that price pertain to both?

A. It did for a while, after I opened then they cut the balcony down to 15 cents, I believe, the balcony prices.

Q. Do you recall whether after you had disposed of your Corbin Treatre to the Schines, whether the prices, the admission prices, at the Hippodrome increased subsequent to the time they had been lowered prior to the time you disposed of your interest?

A. No, I don't, only what I saw on the window. I didn't go in the Hippodrome at all. It just happened to be a picture I wanted to see. I didn't have any particular reason for going in there.

Q. You saw the admission prices on the window of the Hippodrome?

A. Yes, sir.

Q. What were those prices?

A. I think they were 30 cents, the same as the other one.

Q. Mr. Murphy, were you familiar with the Hippodrome and Kentucky Theatres, in so far as their interior and exterior is concerned?

A. Well, not in particular. I have been in there several times.

[fol. 598] Q. Could you compare those theatres with the Viv as of the time it was completed?

Mr. Rogers: Which are those? You only spoke of the Hippodrome.

Mr. Marcus: Hippodrome and Kentucky, I asked Mr. Murphy.

The Witness: Well, neither of them compared with the Viv, so far as equipment is concerned, like seats and machinery, and so forth. The Viv had far better seats and more conveniences and seats further apart and more knee room.

Q. About how old a building would you say the Hippodrome was?

A. The Hippodrome was an old building, but it was a very good constructed building. It looked like one of the old type walls when they used brick walls 18 inches instead of 12. Most of them put them 12 now, getting them down to paper.

Q. How did the interior compare with the Viv in so far as decorations, paintings and the like?

A. Well, in time it has been more expensive than the decorating in the Viv, but at the time the Viv was more ahead, because it was old and scaled off.

Q. Talking about the Hippodrome now?

A. Yes, the Hippodrome.

Q. In respect to the Kentucky, what can you say about [fol. 599] that theater?

A. I can't say much for that. It was a pretty dirty rat hole.

Mr. Rogers: I move to strike that.

The Court: Strike it out. Describe it, if you can.

Q. Just state in general terms what was its condition?

A. It was one of the cheap houses, about as cheap as you can get anybody to go in, very old and small and bad seats and stuffy, and things like that.

Mr. Rogers: I move to strike it all, conclusion of the witness.

The Court: Strike it all. Let him answer it is an old building. Describe it.

The Witness: Had bad seats. It was small and the air bad, smelled stuffy.

The Court: How many seats, what was the seating capacity?

The Witness: Looked like it would seat about 350.

By the Court:

Q. How about the Hippodrome?

A. The Hippodrome I would judge from the looks of it seats about 700.

The Court: And the other one?

The Witness: 512, but the Hippodrome had a balcony, and the Viv didn't have a balcony. It is all on one floor.

[fol. 600] Q. Mr. Murphy, you stated that you have had considerable experience in operating theatres?

A. Yes, quite a bit.

Q. And in buying film product for theatres?

A. Yes, sir.

Q. Mr. Murphy, in your opinion, could the Kentucky and the Hippodrome use all current first and second-run product of the major companies during one season?

A. No, sir.

Mr. Rogers: I object to that as calling for a conclusion, on the ground that there are not sufficient facts on which this witness can predicate an answer to a hypothetical question of that kind.

Mr. Marcus: This witness has been in the business for 20 years.

The Court: What period are you speaking about?

Mr. Marcus: Speaking about the period of 1938-1939 and 1939-1940, taking each year separately.

The Court: Do you know the number of first-run pictures that were produced those years, approximately?

The Witness: Not exactly, pretty close to it.

The Court: Approximately each year.

The Witness: Those years it — more than 500 new pictures made.

[fol. 601] The Court: Each year, you mean?

The Witness: Yes, sir, each year.

Mr. Rogers: So far as Mr. Marcus' question is concerned, if that is a hypothetical question, I object to it on the ground the necessary elements have not been evolved in order to enable the witness to base an opinion on a hypothetical question, if this witness is testifying as an expert.

The Court: Well, the question is more of a mathematical tabulation, isn't it?

Mr. Rogers: Yes, and physical conditions, conditions of the town, population.

The Court: No, he was not speaking of the number.

Mr. Rogers: It depends on all those conditions. A poor theatre and a poor town may be compelled to use less, and couldn't possibly use as many as a good theatre in a good town, towns vary and conditions vary.

Mr. Marcus: Mr. Murphy has stated he is familiar with the Viv, Hippodrome and the Kentucky, and I have now asked him in respect to the Hippodrome and the Kentucky. He has stated he knows there were at least 500 pictures produced during each of those years. He has stated that he [fol. 602] has had long experience, not only in running a large number of theatres, but also in buying film products for those theatres.

The Court: It depends on whether they have matinees——

Mr. Rogers: And how many splits, whether they are playing double or single features. What they do on their week-ends. All those must be taken into consideration.

Mr. Marcus:

Q. Mr. Murphy, taking into consideration the elements that Mr. Rogers has just stated, in your opinion, could those two theatres have used all of the current first-run and second-run product?

A. No, sir, not the way they were running the pictures at that time.

Mr. Marcus: Your witness.

The Witness: Understand, I don't profess to be any professional theatre man.

Mr. Marcus: That is all.

The Witness: I have only been in the business——

The Court: We will suspend for ten minutes.

(Short recess.)

[fol. 603] Mr. Rogers: May it please the Court, I move to strike the testimony of this witness as to the ability of the Hippodrome and the Kentucky to absorb the product first run and second run in Corbin, on the ground that at the close of this witness's testimony he stated freely that he does not pretend to be any expert in moving picture theatres and that he just stated that for what it was worth. That being so I respectfully submit, may it please the Court, that the witness out of his own mouth proves his lack of qualification, and that the testimony should be stricken.

The Court: You did not object to that question.

Mr. Rogers: I did object to that question.

Mr. Marcus: No, your Honor, he did not.

Mr. Rogers: I did object to the question right along——

The Court: Not to his stating that.

Mr. Rogers: Yes, I raised my objection to the question as originally propounded and the question was not changed one bit. I claim if that is a question to qualify this witness it must be based on all the facts and all the circumstances involved. In spite of that your Honor permitted the ques- [fol. 604] tion to be put to the witness and the witness answered, and then the witness at the close of his answer stated, "I don't pretend to be any expert in this knowledge."

The Court: My recollection of it is that the last question put—I had it in mind specifically when the question was put—it was, "Could you use that number of pictures?" To that question no objection was raised.

Mr. Rogers: I took it for granted that my objection was broad enough to cover that, but in any event, the witness having testified that he was not competent, that he was not an expert, I can always make the objection to strike, because if I had adduced that from him on cross-examination I could move to strike. He having volunteered I could move to strike. The answer having revealed that the witness does not claim to be an expert and merely stating it for what he thinks it may be worth, that being the answer, it is subject to a motion to strike.

The Court: Proceed and we will see what the record discloses.

Cross-examination.

By Mr. Rogers:

Q Prior to the time that you made your deal with Mr. [fol. 605] Owens to take the lease on the Viv Theatre you had come to Corbin to look the town over, hadn't you?

A. No, not in particular. I came to Barbourville and saw Mr. Owens about the time Mr. Scott leased the theatre. In fact,——

Q. When was that?

A. Well, that was some time before May of the same year.

Q. That was some considerable time before May of the same year, wasn't it?

A. It must have been.

Q. That was several months before that?

A. Yes.

Q. And you went to Barbourville to see Mr. Owens because you knew that some deal was being made with Mr. Scott, didn't you?

A. The man that was——

Q. No. Please tell me, isn't that why you went to Barbourville?

A. No.

Mr. Marcus: I object to the form of the question.

The Court: Overruled.

Q. At the time that you went to Barbourville to see Mr. Owens did you know that Mr. Scott had been making a deal with Mr. Owens for a theatre in Corbin?

A. No, sir. I would have to explain that, and——

Q. No. Just answer my question and we will get along [fol. 606] very much more expeditiously. When did you for the first time discover that Mr. Owens intended to build a theatre in Corbin?

A. Some time in 1939.

Q. Don't you remember when in 1939?

A. No, sir.

Q. When did you start your negotiations with Mr. Owens?

A. I didn't start any at all with Mr. Owens until after Mr. Owens told me that he had cancelled Mr. Scott's lease.

Q. And do you remember when that was?

A. Well, it was around May 19th, because my lease was made on May 19, 1939.

Q. I know your lease was made on May 19, 1939, as you testified.

A. I think it was the same day. I think I had been down that way, for some reason, and I didn't go to see Mr. Owens at that particular time. I happened to run into him on the street at Barbourville and he told me that Scott had sold his lease to the Schine Circuit and that he wouldn't let Schine have his house there and it was for lease.

Q. Was that on May 19th?

A. I think it was all May 19th. I think that is the day I made the deal with him.

Q. That was May 19th?

A. Yes, sir.

[fol. 607] The Court: The reporter is here now and we will look up the last question.

(The reporter read as follows:

"Mr. Marcus: Mr. Murphy, taking into consideration the elements Mr. Rogers has just stated, in your opinion could those two theatres have used all the current first run and second run products?

A. No, sir, not the way they were running the pictures at that time.

Mr. Marcus: Your witness.

The Witness: Understand, I don't profess to be any professional theatre man.

Mr. Marcus: That is all.

The Witness: I have only been in the business"——).

Mr. Rogers: Based on his statement "I do not profess to be a theatrical motion picture man" I based my motion to strike his testimony.

The Court: I will let it stand.

By Mr. Rogers:

Q. Then you mean that you met Mr. Owens on May 19th accidentally and on the same day made the deal and signed the lease with him on the same day?

A. Yes, sir, and gave him a check for a thousand dollars for advance rent.

[fol. 608] Q. And you mean you had never spoken to Mr. Owens prior to May 19th about possibly acquiring this theatre in Corbin, Kentucky?

A. No, sir, the only time I——

Q. "No, sir", do you mean to say no, sir; is that right?

A. I had spoken to him.

Q. When had you spoken to him prior to May 19th?

A. At the time that Mr. Scott made the lease. In other words, I went to Barbourville and stayed all night and Mr. Scott and me both stayed in Mr. Owens' hotel, and it was a question on the next morning whether Mr. Owens would talk to me or not. If Mr. Scott made the deal with

him he didn't talk to me, so that he didn't talk to me, he just simply told me that Mr. Scott and him had made a deal.

Q. When was that?

A. That was in 1938. I don't know the time. Or, 1939, I believe. Or possibly it could have been in 1938.

Q. As a matter of fact, wasn't it in 1938?

A. Well, I don't know. That is what I say. It was either 1938 or 1939. I didn't keep no particular track of it.

Q. Do you remember when Scott made the deal with Owens?

A. I couldn't—— I know when but I don't know the date. I know that they claimed that they made it the day I came to Barbourville.

[fol. 609] Q. And you don't remember what date it was you came to Barbourville?

A. No.

Q. And you did know some time in 1938 at the time that Scott was making his deal with Owens that Owens was contemplating building a theatre in Corbin, didn't you?

A. Yes, sir.

Q. You had visited Corbin a number of times, hadn't you?

A. No, I never was in Corbin. Only through Corbin.

Q. When was the first time you had ever visited Corbin?

A. I believe the first time I ever stopped in Corbin was on the day that I leased the building.

Q. That is on September 19; is that what you mean?

The Court: May 19th.

Q. May 19th?

A. Well, perhaps May 20th.

Q. You mean that is the first time you had ever put your foot in Corbin?

A. I had been through there. I——

Q. One moment. Had you ever been in the town, stopped in the town of Corbin?

A. The way our trains comes out of where I live you get into Corbin, I would say, about 10 o'clock at night, and you stay there until 2 o'clock in order to get out to Cincinnati. Then you are drifting around. You are going [fol. 610] in the theatres and you are going in drink stands, and different things. And that is the only time I had ever stopped in Corbin.

Q. Coming into Corbin, or going through Corbin, as you say, coming in there at 10 o'clock at night and taking a train out at 2 o'clock at night, you had done that before you made the lease with Owens?

A. Yes, and I——

Q. Hold on a moment. One thing at a time. How many times had you gone through Corbin that way, getting off the train at 10 o'clock at night?

A. Oh, I don't know. The most of the time when I went to Cincinnati or out anywhere like that I would drive my car to Corbin and store it there and get on the train.

Q. Let me ask you: How many times did you drive your car to Corbin and stay in Corbin before the time you closed the lease with Owens?

A. I couldn't tell you how many times.

Q. You had done it several times, hadn't you?

A. Just a few times.

Q. When you were staying over, whether it was a train stayover or whether it was with your car there, you did go into the town and visit the moving picture theatres, didn't you?

A. Yes, sir.

[fol. 611] Q. And at that time when you went into the town and visited the moving picture theatres did you visit both the Hippodrome and the Kentucky?

A. No, sir, I don't think I ever was in the Kentucky until after I lease the house. Then I was in the Kentucky.

Q. But you were in the Hippodrome before you leased the house, weren't you?

A. Yes, possibly a couple or three times.

Q. And at that time who was operating the Hippodrome?

A. I don't know. I didn't know anybody there then.

Q. That was before the time Schine started to operate the Hippodrome, wasn't it?

A. I don't know when Schine started to operate.

Q. Well, at that time the only two houses operating in the town were the Hippodrome and the Kentucky isn't that right?

A. That is right.

Q. And at that time those two houses were playing the first run product of all the major companies, weren't they?

A. I don't know about that.

Q. Well, do you know who was playing first run products in Corbin before you took over the operation of the Viv?

A. Do I know who was playing?

Q. Yes.

[fol. 612] A. Well, I had found out that the Schine Circuit had the two theatres in Corbin.

Q. And they were playing all the first run product; isn't that right?

A. Well, I don't know about that then. I know they claimed they were when I went to buy some of them.

Q. When you came into the town didn't you go over to look at the Hippodrome and look at the Kentucky to see what they were playing?

A. No, sir, that wasn't any of my business. I just simply went to the show to pass the time.

Q. Do you mean as a motion picture operator in the town of Corbin it wasn't your business to go out and discover was product was going to be played against your theatre?

A. No, sir, I didn't have any theatres close enough for that.

Q. You had the Viv Theatre in the same town, didn't you?

A. Yes, during the time of my operation there. Of course I watched that pretty close then.

Q. Let me ask you this: After the house was turned over to you by Mr. Owens—the Viv, I mean—it was your obligation to put all the equipment in, wasn't it?

A. Yes, sir.

Q. In equipment you put all the seats in?

A. Yes.

Q. And the sound equipment?

[fol. 613] A. Yes, sir.

Q. And the screen?

A. Yes, sir.

Q. And the box office equipment?

A. Yes, sir.

Q. And all the other necessary equipment in the theatre; isn't that right?

A. Yes, sir.

Q. When did you actually start putting the equipment into that theatre?

A. Well, my equipment was finished, ready to be shipped, I would say, along about the 1st of July, something like that, or possibly on the last of June, but I hadn't yet secured product——

Q. Never mind about that. I am asking you about your equipment now. When did you start putting that in?

A. I had the equipment——

Q. One moment. When did you actually start installing the equipment in the Viv Theatre?

A. Well, just before I was ready to open. As soon as I could see I got a picture to open with I had my equipment shipped in.

Q. You say you put it in just before you started to open; is that right?

A. Yes.

Q. Do you remember when you opened that theatre?

[fol. 614] A. Yes, sir.

Q. When?

A. Well, I think it was on August 7th.

Q. Are you sure you operated that theatre at all during the month of August? Are you?

A. Do you mean after I started?

Q. No, I mean are you sure you ever operated that theatre during the month of August, 1939?

A. Yes, sir, I started——

Q. You are sure of that, are you?

A. Yes, sir, I started on the 7th of August.

Q. You are sure of that, are you?

A. Yes, sir.

Q. And you are sure you operated all through the month of August after the 7th of August, 1939?

A. Yes, sir.

Q. And you are sure you operated all through the month of September, 1939?

A. Yes, sir.

Q. And I suppose you are equally sure that you operated all through the month of October, 1939; is that right?

A. Yes, October, yes, sir. I think I opened on the 7th of August and I operated straight through until April 1st.

Q. You are sure of that?

A. Yes, sir.

[fol. 615] Q. And you opened it in August of 1939 and operated it right through until April of 1940; is that right?

A. Yes.

Q. Well, now, do you recall having had give-aways distributed in the town of Corbin before you opened the Viv Theatre?

A. Well, I expect I did. My son was there and opened it.

Q. Let me show you this. Is that one of those give-aways that you distributed, or throw-aways (handing to witness)?

Mr. Marcus: There has been no testimony on direct in respect to give-aways. I think this is improper cross-examination.

The Court: Overruled.

Q. Will you please answer my question?

A. I think this is right. I think it was October 7th I opened instead of August.

Q. Well, now, let us see. Then you want to change your testimony now, do you, to the effect that you didn't open the theatre until October 8th of 1939, instead of August 7th of 1939, is that right?

A. October 7th instead of August 7th.

Q. But that is one of the throw-aways, isn't it, that you used at the time?

A. I expect it is. My son opened it.

Q. But you expect it is?

A. Yes, sir.

[fol. 616] Mr. Rogers: I offer it in evidence.

The Court: Is it material except as to the date?

Mr. Rogers: That is all.

The Court: He has already stated it was October 7th. I don't think we should encumber the record with a lot of unnecessary things.

Mr. Rogers: I think it is proper to show the picture. He said he opened the show with "Cover Girl".

The Witness: I said I thought I opened with "Cover Girl", but I remember the picture since I see this here, that it was Jean Parker in "Romance of the Limberlost."

Q. Do you remember whose picture that was?

A. That was Big Feature Rights. That was a little company.

Q. You said your price scale in the Viv, from the time you opened it until the time you made your deal to get rid of it, was at all times 15 cents for adults and ten cents for children; is that right?

A. With the exception of added attractions like vaudeville, and so forth. Then we charged a quarter.

Q. How often would you put on these added attractions?

A. I don't know just how often. Every time we could get one, but I don't know how often that was.

Q. Would that be week ends?

A. Well, sometimes. Sometimes it wouldn't.

[fol. 617] Q. Did you ever charge less than ten cents right through the house?

A. Nobody except children.

Q. Do you remember seeing this announcement which was inserted in the Corbin Times in the issue of October 8, 1939 (showing to witness)?

A. We have had one—

Q. You remember that being put in the paper, don't you?

A. No, sir, I don't know anything about this.

Q. Never saw it?

A. No, sir.

Q. Who arranged about the notices and the publicity?

A. My son. That is Mr. Owens there.

Q. Now, do you remember discussing with Mr. Owens inaugurating a policy in that theatre of letting everybody in at least once a week for ten cents?

A. No, sir; that has always been my policy, the whole 31 or 32 years I have been in the business I have always at any time, even during the last War when they had—when people didn't know what to do with so much money, I had one day, bargain day, at ten cents, and I have always continued to do that every place I have been.

Q. You have had a bargain day?

A. Yes, sir, I do yet, and I expect to as long as I am in business.

[fol. 618] Q. You put a bargain day into the theatre at ten cents?

A. Yes, ten cents.

Q. This was an accurate statement, was it, then, in this notice?

A. It might have been. I don't know what particular day that was on, but I believe that Tuesday was our bargain day in Corbin.

Q. That was a steady policy?

A. Yes; or perhaps Wednesday. Yes, it is a steady policy, yes, sir, wherever I am.

Q. I am talking about Corbin. During the period you operated at Corbin you had a bargain day, when you let everybody in for ten cents, whether they were adults or children?

A. Yes, sir.

Q. Didn't you also have a policy of letting children in at five cents?

A. There was a time or two that this boy might. I never had a policy of that kind myself, but there was a time that this boy would let the children in when he would be starting a serial, or something like that, he would let them in at five cents but right back at it Schine's would let the children in at five cents and give them a cone of cream with it.

Q. Will you please stop talking when I ask you to?

[fol. 619] A. Yes, sir.

Q. All right, I will thank you if you do.

Mr. Rogers: I move to strike this witness's testimony as to what Schine did.

The Court: Strike it out.

Q. I am asking you what you did. You did have a policy of allowing children in for five cents, didn't you?

A. There was once or twice, or perhaps two or three times, when he started a serial he told me he let them in that way in order to get them started.

Q. You did do it, didn't you?

A. He tells me he did. I didn't happen to be there any day——

Q. Don't you know?

A. You don't take hearsays; you have to have facts.

Q. I am glad to have you say that, so that we will forget what your son told you. What I want to know is this: Just how much time did you give to this Viv Theatre, I mean you personally, from the time you opened it on October 8, 1939, until the time you disposed of it in April or May of 1940?

A. Well, I usually give about one day a week.

Q. Do you remember which day that was?

A. No, sir, just any time I had a chance when I could spare the time at home.

Q. If during certain weeks you couldn't spare that time [fol. 620] you didn't come on?

A. Yes, there were lots of weeks I didn't.

Q. Do you remember about how many weeks you didn't come on?

A. No, sir.

Q. In other words, you left the running of this theatre to your son, didn't you?

A. Yes. To tell the truth——

Q. No. Tell me: Did you leave it to your son or didn't you?

A. I paid my son a salary, with a guaranty of a salary and gave him all the money if he could make any money out of the deal, give him all he could make and pay him a salary.

Q. In other words, you paid him a salary out of the receipts of the theatre and in addition to that whatever he made?

A. He never made receipts there.

Q. Just what do you mean?

A. I mean by that he never made expenses. He never did pay his own salary in Corbin.

Q. In other words, you mean that during the time you had that theatre you never even made the expenses of the theatre?

A. No, sir.

Q. He never made enough to pay his salary?

A. There were some weeks he made enough to pay his salary. He took his salary weekly, if he had money enough [fol. 621] to do it, when the end of the week came. If he didn't I paid it myself.

Q. What I want to know is: During the course of your operation of that theatre at Corbin, over that period, did that theatre make its expenses or didn't that theatre make its expenses?

A. It didn't make its expenses. In fact, I paid $260 a month installment on my equipment and I paid every dollar of that out of my own pocket. There were some weeks it made this boy enough money to pay him his salary and other weeks it didn't.

Q. On the whole, it didn't make enough to pay his salary every week?

A. No, sir.

Q. So that you lost money during the period you were operating?

A. Yes, sir.

Q. And didn't make expenses?

A. No, sir.

Q. There is no question about that, is there?

A. No, there is no question about that.

Q. In addition to having certain dates when you charged only ten cents admission and the days when you charged only five cents admission that you testified to, were there periods at any time during the operation of that theatre when you charged less than fifteen cents and ten cents [fol. 622] to people who came to see the show?

A. Less than fifteen and ten?

Q. Yes.

A. I don't think so.

Q. Well, did you ever have a policy in that theatre known as the two-for-one policy?

A. I think that is the way we handled the children on that five-cent day.

Q. You mean that was for children only?

A. I think that is where the five cents came in for the children. I don't think we ever charged five cents for one admission. I think there was two-for-one there.

Q. Well, did you ever have a two-for-one policy with reference to adults at that theatre?

A. I don't know about that. The boy might have had.

Q. You don't remember that, do you?

A. No, sir. I know I have had them in other towns that way, but I don't know about Corbin.

Q. Don't you know, as a matter of fact, you did the very same thing in Corbin?

A. It might have been.

Q. You don't remember, do you?

A. No, sir.

Q. In order that there may be no mistake about what we mean on a two-for-one ticket, that means that you admit [fol. 623] two people for one price of admission; isn't that right?

A. That is right.

Q. Now I show you this ticket called "Special guest ticket". Will you please read that ticket (handing to witness)?

A. I guess that is right. I say I don't know. He might have done it.

Q. You think, then, that it is right, that you did have that two-for-one policy at that Viv Theatre?

A. It looks like at least once there. I don't know that it was a policy.

Q. You don't know how much more often than once it was put in as a policy?

A. I don't know. It might have been put in every week. I don't know. That might have been the only time.

Q. But you don't know?

A. No, sir.

Q. When you picked and fixed the price of 15 cents for adults and ten cents for children you voluntarily fixed that price, did you?

A. Yes, I figured that was all I could get, for the type of pictures I had to run and second runs, and then I figured that was pretty high compared with 25 cents for first run double features at the other place.

Q. In other words, nobody forced you to put those prices in of 10 and 15 cents, did they?

[fol. 624] A. No, sir.

Q. That was your voluntary act?

A. Yes. I already had the house under contract and I had to take care of my lease contract and I couldn't let it stand there and I had to get something in.

Mr. Rogers: I should like to have this so-called throw-away marked for identification.

(Thereupon the throw-away referred to was marked as Defendants' Exhibit D-20 for identification.)

Mr. Rogers: Now I also wish to have marked for identification this special guest ticket on the two-for-one.

(Thereupon the special guest ticket referred to was marked as Defendants' Exhibit D-21 for identification.)

Q. Do you remember testifying in an action in the United States District Court for the Western District of Virginia in a suit entitled "Byers Theatres, Inc., against M. K. Murphy and others"?

A. Yes, sir.

Q. As Defendants?

A. Yes, sir.

Q. You remember you are the M. K. Murphy who was a defendant in that suit?

A. I am the M. K. Murphy, yes, sir.

[fol. 625] Q. And that suit related to a claim made against you that you bought up all the product in Appallachia against Byers; is that right?

A. Byers wasn't even in Appallachia.

Mr. Marcus: Just what has Appallachia got to do with Corbin?

Mr. Rogers: You will find out that Appallachia has a great deal to do with Corbin when I read this testimony.

The Court: I do not see its purpose unless it is for the purpose of contradiction.

Mr. Rogers: It is.

The Court: Let us get down to what the testimony is.

Q. Do you remember this question being propounded to you when you gave your testimony in that case, and you giving this answer: "Q. Did you operate that theatre at Corbin profitably? A. Yes, sir, we made a little money there. Q. You say 'we.' Who was 'we'? A. "——

Mr. Wright: If the Court please, he was not asked on direct examination about his profits at all. It is not proper for Counsel to take him into a collateral subject which has not been covered on direct and then try and impeach him. He was his own witness for the purpose of this cross examination about profits. We had asked him nothing about [fol. 626] profits. Having done that and gone into that field, and having brought out that testimony, he can't impeach him on that. That is highly improper.

Mr. Rogers: Under cross examination I am allowed the privilege even of impeachment under the rule.

The Court: What do you claim the materiality is of this testimony with reference to his operating the company at a loss? What materiality has that in this case?

Mr. Rogers: I think this witness wanted to impress upon this Court the fact that by reason of the opposition he met, and being unable to get product, that he was operating that theatre at a loss and couldn't even make expenses, and if that be so, in order to afford relief there must be not only damage but there must be injury to the person claiming here, and he is the complainant here.

Mr. Wright: He is not the complainant at all. The United States is the complainant.

Mr. Rogers: So far as this particular situation this man is the complainant. Now he tells us in one breath that he was not making any money and he couldn't even pay his [fol. 627] son's salary, but at another time under oath before the Federal Court, where he was a defendant also in a Sherman Anti-Trust lawsuit, he testifies there he made a nice profit in the Corbin theatre. If he made a nice profit

he must have had plenty of product and enough product on which to operate and still make a profit. If that be so it seems to me that goes to the credibility of the witness and also goes to the right of the plaintiff, the Government, to ask for relief in a situation of this kind.

The Court: On the question of whether he had first or second run pictures it might be competent. He claims he couldn't get first and second run pictures.

Mr. Rogers: Your Honor, whether this man could get first or second run pictures is beside the question. The question is whether this man got a sufficiency of product to run his theatre and run his theatre properly. He has clearly indicated before he ever opened his theatre in the town the first run product was bought by people who operated the theatres in the town and that they were the prior customers.

[fol. 628] The Court: That would not go to the question of the profit.

Mr. Rogers: It breaks down one phase, that if the product was run first run to these prior operators before he came into the town, without giving some good substantial reason——

Mr. Wright: What has that got to do with the testimony?

Mr. Rogers: Just wait a moment. I happen to be addressing my remarks to the Court and not to you.

The Court: Proceed.

Mr. Rogers: Having established that the product was sold first run to predecessors who were in the town before this theatre was ever built, before the Viv was built, the onus is cast on the plaintiff to show that he could not get his product——

The Court: He made this contract in May. Now ordinarily they make their contract for pictures during the spring.

Mr. Rogers: If he had a theatre; but he had no theatre.

The Court: If a man contracted to take so many pictures he would be obligated to take them, would he not?

Mr. Rogers: He could not play them. He could not take them if he didn't play them. He had no theatre.

The Court: My point is this, that at these times when he went to the Fox and the different co panies there, the [fol. 629] first runs were already let in that period expiring the first of August or September, 1939. They were released for that year. He mentioned 1940——

Mr. Rogers: There we have a hiatus in the proof. I contend I do have the right to show that this man—in the first place, I have the right to test the credibility of this witness, and based on this test of credibility your Honor may give as much or as little weight to the testimony of this witness as you choose. If I can show that this witness under oath has contradicted himself deliberately——

The Court: It might be material in so far as the proper examination is concerned.

Mr. Rogers: I think it is very material on the question as to whether or not he was operating this theatre successfully and profitably or, as he claimed before, that he was losing money on this theatre. After all, as equity is to be applied to this case, it may be applied on that theory, on one theory, but if a man was being driven out of business by ruinous competition that caused him to lose money en- [fol. 630] tirely different principles apply than where he is making money.

The Court: Is your answer to that that if he got first and second runs he would make more money?

Mr. Rogers: If he could pay the price. We have not any evidence here as to what price he offered these people. There is no evidence here as to what price the competitors paid and what price he was willing to pay.

Mr. Marcus: There is evidence here in each case he was told he couldn't get the product because Schine had it.

Mr. Rogers: Regardless of that, there must have been some offer made, and if he does not show he was able to pay the price in his theatre that Schine paid—had the ability to pay first run price, after all, it is not a question of a man walking in and saying, "I want first run product." It is the same if I walked into an automobile agency that sold the Ford and Chevrolet and Lincoln cars, and I say, "I want that Lincoln car"——

The Court: That applies to anybody and everybody, the price offered.

Mr. Rogers: Yes. After all, you take your big theatres [fol. 631] in the big cities and they pay as high as $25,000 and $30,000 and $40,000 to play a picture first run.

The Court: There must be some equality of price in some way. I do not mean it would be just the same as——

Mr. Rogers: No, it would not be just the same, but it is rated depending upon the ability of the town to pay the

price and the admission price that you can charge in that town for the product.

The Court: He testified he was told he couldn't get the product. We don't know whether he was able to pay or not. I think it should be presumed he was, under those circumstances.

Mr. Rogers: I do not think there is any presumption whatever on the question of what he could afford to pay.

The Court: There is not any presumption the other way.

Mr. Rogers: The proof is affirmatively on him to show that he was in the position to pay those prices.

The Court: I do not think the question of his profit or non-profit is material.

Mr. Rogers: May it please the Court, when the questions were propounded to this witness, when he testified that he [fol. 632] was losing money, no objection was made to the question I propounded to him. Now, there having been no objection raised then and the plaintiff being willing to sort of rub his hands in glee over the fact the witness had testified he had a losing proposition, they cannot very well turn around now and say, now that the tables are turned on us we are not going to let the witness tell the truth.

Mr. Wright: This is a question of technique, and that is why I want to get it at length. Counsel has been allowed to roam all around on his cross examination and go into matters that appealed to him, and as far as we are concerned we were willing to have him do it, but when he does it he takes a certain hazard or risk, and that is if he gets an answer that he does not like he then is bound by those answers and he does not have the opportunity to impeach on those issues that he chooses to create himself on his cross examination.

Mr. Rogers: Not when I have an adverse witness.

Mr. Wright: All he may impeach on is the subject matter of the direct examination, and that is the matter that the [fol. 633] witness was offered to prove, otherwise we would simply be here an interminable length of time. If he wants to lead this witness off into channels he wants to explore then on getting the witness's answer he cannot impeach on the answer that he has created.

Mr. Rogers: I think it is a very simple matter. I mean the Government cannot rub its hands with glee because a detrimental answer is made and not object to the line of interrogation. If he wants to cut short my interrogation

he can always object. Not having done so, when he gets an answer he really thinks he shouldn't get, and when it shows that answer is untrue he cannot get up and say, "I want to object." He cannot say, "I have an untrue answer and I want the benefit of an untrue answer."

Mr. Wright: There is not any showing that it was an untrue answer. If we are going to litigate that question of whether that theatre showed a profit, that is a question in itself. It would take a number of witnesses and several days' time. I presume we will not litigate that question merely because Counsel chooses to go into it on cross examination. It does not change the issues that are made by the pleadings and it does not change the issues that are made by our offer of the witness's testimony on direct examination.

[fol. 634] Mr. Rogers: Well, as a matter of fact, we might say that Mr. Wright is always worrying about what is going to happen in the future with future witnesses. Let's worry about this witness, what his testimony is, and my right to cross-examine—there is no question about that—and they didn't raise the question that I had no right to raise that on cross.

Mr. Wright: We are going to have some testimony, apparently, from some other lawsuit. Are we going to try out the issues raised in the other lawsuit?

Mr. Rogers: This man is still talking about Corbin in this lawsuit.

The Court: The question in my mind is simply this, whether the question of profit or non-profit is material here, as bearing on the claim of exclusion from showing pictures. That is all.

Mr. Rogers: Except one of the issues they raise in their bill of particulars that this witness was forced out of business by Schine's competition. Now, it must necessarily be assuming from that.

[fol. 635] The Court: Objection overruled.

Mr. Rogers:

Q. The question was, "Did you operate that theatre at Corbin profitably?" "A. Yes, sir, we made a little money there."

Do you remember that question being propounded to you and you making that answer?

A. When was that?

Q. How many times did you testify in that suit, do you remember?

A. Well, I don't think,—I think a couple of times.

Q. Let's see if I can't help you on that. According to this you appeared at the office of N. M. Heuser, First National Bank Building, Norton, Virginia, on July 11th, 12th and 13th of 1940. Do you remember that?

A. Yes, sir.

Q. Do you?

A. 11th and 12th of what?

Q. The 11th, 12th and 13th of July, 1940. Do you remember that?

A. Yes, sir. That was just a few days after I had opened the Corbin, wasn't it?

Q. After you had opened what?

A. After I had opened the Corbin.

Q. No, Mr. Murphy, you claim you didn't—you corrected [fol. 636] your testimony. You said you didn't open the Corbin until October, 1939.

A. This here was before I ever opened the Corbin, wasn't it?

Q. It was after you disposed of your theatre to Schines.

A. Was it?

Q. Get your mind straight.

The Court: You said you opened this theatre in October, 1939. It is asserted here this testimony was taken in July, 1940, that is, the following year.

By Mr. Rogers:

Q. You remember that, don't you?

A. Yes.

Q. Do you remember giving that testimony in the month of July, 1940?

A. I don't know. That never did come to trial.

The Court: Do you remember giving that testimony? The trial is not material.

The Witness: I remember being there.

By Mr. Rogers:

Q. Do you remember giving that testimony?

A. No, I don't. I don't remember.

Q. Do you remember that testimony at all?

A. I guess I did, if it is in there.

Q. The next question was: "You say 'We', who was 'We'?"

[fol. 637] A. That was my son and me.

Q. Let me read this to you. I am reading this out of this book, and I want you to follow me, please. "It says 'We,' who was 'we'?" And you said "I really didn't make any money out of it. I equipped the theatre and really just did it for that boy and let him have what he made out of it, my son." Do you remember saying that?

A. Yes.

Q. Remember this next question: "Is that C. L. Murphy?" And you answer was "Yes, sir." Remember that?

A. Yes.

Q. Let us take the next question.

Mr. Wright: May I interrupt just a minute? As far as the allegations in the complaint are concerned, on the check I have made, the statement is Mr. Murphy is among those who were driven out of business by not being permitted to have sufficient product. There is no allegation in the complaint with respect to his profits at all.

The Court: I think the latter part of the testimony developed by his statement in reference to its being profitable, he testified, that he just read, that he didn't make any.

[fol. 638] Mr. Rogers: Now, he didn't make it. He turned it over to his son and let his son make it.

Mr. Wright: I say on the basis of the pleadings, it is wholly immaterial.

Mr. Rogers:

Q. Do you remember this question: "Do you know how much he made out of it during the course of his operations?" And you said "He made more than a salary. I don't know how much he made, but it was operated as a reasonable profit"? Do you remember that?

A. No, sir.

Q. Do you?

A. No, sir.

Q. You say you don't remember that?

A. No, sir.

Q. All right. Do you remember this: "Why was it that you gave it up?" And your answer says "It was on a trade. A fellow comes along and wants a trade, and if it

suits me, I will trade." The next question "You did trade it off to somebody?" Answer "I sold it." "Q. To whom? A. To the Schine Circuit." Do you remember that?

A. I guess I do. I know I sold it at a loss, and quite a [fol. 639] loss.

Q. Never mind that. Do you remember the testimony I read to you?

A. I don't remember very much about that testimony.

Q. Would you say that that was not so?

A. No, sir, I wouldn't say it was not so.

Q. Would you rather say those questions were put to you, and you did make those answers?

A. That must have been, or they wouldn't be in there.

Q. Right you are.

A. But I do know at a time——

Q. One moment, please. Please, Mr. Murphy, answer my questions. We will get along much more quickly, and you will be able to get home. Do you remember in the course of that hearing being questioned as to whether or not you could operate a theatre in a town comparable to Corbin without the major product and you taking the position you could and do it properly and profitably?

A. Yes. I still say if you have second-runs in Corbin you can make money. If somebody is not permitted to buy it up and leave it on the shelf to keep you from getting it.

Q. You also took the position you did not need the product of the major companies in order to run a house like Corbin.

[fol. 640] The Court: Which run are you referring to, first or second-run?

Mr. Rogers: Any run.

The Court: He told about the second-run.

Mr. Rogers:

Q. I am saying, didn't you take the position you could run a house like Corbin without any of the major product and still do it profitably?

A. You don't have to have the major product to make money in Corbin.

Q. And you took that position when you testified about Corbin in that Appallachia suit?

A. Yes.

Mr. Rogers: That is all. That is all I want to know.

The Witness: If you have the first-run of the little companies.

Q. Now, you testified that after you got rid of the Viv Theatre to Schine that you visited the Hippodrome Theatre on only one occasion?

A. The Viv Theatre on one occasion.

Q. Didn't you also testify that after you got rid of the Viv you went to the Hippodrome?

A. No, I said I went by the Hippodrome. I said I visited, I saw a picture in the Viv, and I didn't go to the Hippodrome.

[fol. 641] Q. Do you remember when that was?

A. No. It was some time after April, 1940, though.

Q. In other words, you know you sold it on April, 1940?

A. Yes, sir.

Q. And you say it was some time after April?

A. And it was a few months later, I don't know just when.

Q. On the same day did you visit the Viv Theatre?

A. That is where I went.

Q. The same day?

A. I didn't go to the Hippodrome, but I did go to the Viv.

Q. That was on the same day, I mean? I mean the day you went to the Viv was the same day you looked at the box office of the Hippodrome, but did not go into the Hippodrome?

A. No, I didn't go into the Hippodrome.

Q. But both of those things happened on the same day, didn't they?

A. I am not sure whether they did or not.

Q. Don't you recall now when it was you saw this price of 30 cents at the Hippodrome?

A. No, but it was some time after I sold the Viv.

Q. You don't remember how long afterwards?

A. No.

Q. What were you doing in Corbin that day that caused you to go and see the Hippodrome Theatre?

[fol. 642] Mr. Marcus: Your Honor, what has that to do——

The Witness: Well, in the first place, I came to Corbin to see a horse, a stallion that they had up there that I was

figuring breeding some mares to, to tell you the truth, and I came down to Corbin on the same trip.

Q. So you came down to Corbin on the same trip and you went over to the Hippodrome and saw a list of prices of admissions?

A. At the time.

Q. Please answer my question, Mr. Murphy.

A. I don't know as that is the particular time. It might be the particular time I came down to see the horse. I came down to the theatre, and it might have been the time I was by the Hippodrome.

Q. You don't know whether both occurred on the same day, or whether one occurred after the other, do you?

A. No, I don't know. I was in Corbin on several different occasions, three or four different times later.

Q. And where did you see these prices of admission at the Hippodrome Theatre?

A. I think that was on a price sheet in the window and hanging in the window.

Q. Which window?

A. The ticket window.

[fol. 643] Q. You say you noticed the price of admission was 30 cents at the Hippodrome?

A. I think it was. I know 30 cents is what I paid at the Viv at the time.

Q. Never mind about the Viv. Let's stick to the Hippodrome. You say you saw 30 cents in the box office window of the Hippodrome, at that time, is that right?

A. I think so.

Q. What was that for, adults?

A. Yes, for adults.

Q. Any price for the children?

A. Well, I don't remember about that. I had no particular reason for looking. I just happened to remember that I saw it.

Q. You didn't have any particular reason for looking to see what prices for adults was, either, did you?

A. No, sir, I did not.

Q. You did not?

A. No, sir. A fellow who operates a theatre going on by——

Q. Never mind, Mr. Murphy, just answer my questions. So far as the Hippodrome Theatre in Corbin was concerned, that was a well-built, expensively built theatre?

A. It had been a right good house. Not too expensive, but it was a good house, it was a substantial house.

[fol. 644] Q. You know something about buildings?

A. Yes, I do.

Q. Would you say the cost of a building and equipping the theatre would run close to $100,000?

A. No, sir, wouldn't cost that.

Q. What would you say it would cost?

A. Well, you couldn't build it now, but I would say that before the Government put these building restrictions on, it would cost about $60,000 to build it now.

Q. Building and equipment?

A. Wouldn't take very little to equip it, like it is equipped now.

Q. If it was equipped, I am saying. You say you could build that for less than $75,000 and equipped it?

A. If it is equipped like it is now or like it was the last time I was in it you can build it for less than that.

Q. Less than $75,000?

A. Yes.

Q. You say it would cost about $60,000?

A. I would say $60,000.

Q. You wouldn't say it would cost about $75,000?

The Court: That doesn't make much difference, does it? Don't spend time on that.

Q. How much did it cost to build the Viv, or, rather, to do the alteration job?

[fol. 645] A. Mr. Owens told me it cost about $20,000, and I spent $300.00 on it myself on little odds and ends I wanted changed.

Q. From your experience would you say it cost about $20,000 to build?

A. Well, no, I wouldn't let a job like that cost me $20,000.

Q. In other words, you could have built it for less?

A. I could have done the remodeling for less.

Q. And that was just a remodeling job?

A. Yes, sir, remodeling job.

Mr. Rogers: That is all, Mr. Murphy.

Redirect examination.

By Mr. Marcus:

Q. Mr. Murphy, during the time you operated the Viv in Corbin, what was the policy of the Schines in their theatres in respect to prices for children?

Mr. Rogers: I think this witness said he never visited the theatres, never was there.

Mr. Marcus: You asked him as to the period after he had disposed of his theatres.

Mr. Rogers: No, I asked him during the period when he operated the theatres, he said he came there very seldom, his son ran it.

The Court: I will let him state, if he knows about the [fol. 646] price.

The Witness: We visited the Hippodrome and the State very frequently.

Q. The Hippodrome and the what?

A. I mean the Kentucky. They were very friendly towards us and we were towards them, at least, the two boys who operated it, and I kind of made myself to home around there, and they done the same thing to me, and I never paid any admission, and I just don't know what they charged children. I know that the balcony was 15 cents and their main floor 25, and I believe their straight admission——

The Court: Is that the Hippodrome you mean?

The Witness: The Hippodrome, and I think their straight admission in the Kentucky was ten cents, I am not sure, I think that they cut it down to a straight ten cents to adults and children. I am not right sure about that.

Q. Do you know, Mr. Murphy, as to whether or not the Schines had a policy of give-aways, in respect to the period during the time you operated the Corbin?

Mr. Rogers: Is this based on this witness' knowledge?

Mr. Marcus: Yes, I am asking him does he know.

The Witness: Well, I have been there when they had what they call give-away nights or bank nights, whatever they [fol. 647] call it, give-away so much money, you know, to people. That is the only thing. We had the same thing there. We had different things.

Mr. Marcus:

Q. Mr. Murphy, Mr. Rogers asked a question in respect to the kind of product necessary to make money in Corbin. Is it your position that it is necessary to have second-run product of the major distributors in Corbin in order to make a profit?

A. Yes.

Mr. Rogers: I object to that as being incompetent and calling for the conclusion, and it is immaterial what this witness' position is. The question is what is the fact.

Mr. Marcus: That is just the type of question you asked.

Mr. Rogers: That is just unfortunate, then you should have objected.

The Court: State what the fact is.

Q. State the fact.

A. Shall I answer that?

Mr. Rogers: May I have the answer stricken?

The Court: Strike it out.

Q. Is it a fact, Mr. Murphy, that it is necessary to have second-run product of the major distributors in order to [fol. 648] make a profit in the theatre in Corbin?

Mr. Rogers: I object to that on the ground this witness has not been qualified, and on the ground this witness has voluntarily stated he is not a professional theatre man, nor is he an expert.

The Court: I don't know if he would have to be a professional theatre man. The question is whether he is experienced in the operation of theatres to testify.

Mr. Rogers: We haven't had this witness qualified yet as an operator of a theatre.

The Court: I don't know if it would be expected of him. Are you able to—is the question whether he was or is able to state that it is necessary at least to have second-run pictures to make a profit? Is that your question?

Mr. Marcus: In Corbin, yes.

Mr. Rogers: He hasn't been qualified. Surely he isn't qualified in Corbin, because he had his son operate it.

The Court: The question of profit and non-profit. I will let him answer, anyway.

The Witness: Yes, I think you can make money with sec- [fol. 649] ond-run in Corbin with the major companies.

Mr. Rogers: I move to strike it.

The Court: It is just the opposite to the question.

By Mr. Marcus:

Q. Is it necessary to have second-run?

A. Oh, yes.

The Court: You mean second-run of the best pictures?

The Witness: Major companies second-run of the best pictures or first-run of the little companies. You can take first-run of the little companies and get along all right.

The Court: The independents?

The Witness: The independents, or you could take first-run.

Mr. Rogers: Pardon me, Mr. Murphy, please. Don't continue talking unless his Honor directs a question to you.

Mr. Marcus: Will you mark this for identification?

(Thereupon a paper, referred to, was marked as Plaintiff's Exhibit P-23 for identification.)

Mr. Rogers: No objection, may it please the Court.

The Court: They will be received, then.

Mr. Marcus: And I also ask to have this marked for identification.

[fol. 650] (Thereupon the paper referred to was marked as Plaintiff's Exhibit P-24 for identification.)

Mr. Marcus: I offer them in evidence.

(The papers purporting to be contracts, previously marked as Plaintiff's Exhibits P-23 and P-24 for identification were received in evidence.)

The Court: What do they purpose to be?

Mr. Marcus: They purport to be contracts in respect to second-run product for Corbin for the years 1938-1939 and 1939-1940, and we would like your Honor to pay particular attention to the film prices in those contracts.

The Court: What do they purport to be, for what run?

Mr. Marcus: Second run.

Mr. Rogers: May we note upon the record that in the '38-'39 season contract it calls for——

The Court: The contract shows for itself.

Mr. Rogers: I thought for quick reference to your Honor, we might show the number.

Mr. Marcus: I should like to read into the record the answer of Schine to Plaintiff's interrogatory No. 17-A, and this is on page 16: "Town. Corbin, Kentucky. Name of [fol. 651] Theatre. Kentucky. Nature of interest. Lessee. Extent of interest. 100 per cent. Acquired, November, 1938. Seating capacity. 394."

I also would like to read into evidence the answer of Schine to interrogatory No. 18.

Seating capacity of the Kentucky. 394. Closed periods, if any. Part time until 4-4-41, closed 5th.

Mr. McKay: As of the date of this interrogatory.

Mr. Marcus: That is right, your Honor.

Mr. Rogers: What is the date of the interrogatory?

The Court: 1941, is that the date of the interrogatory, is that the date it was taken?

Mr. Rogers: I want to get the date of the interrogatory.

Mr. McKay: Part time until April 4th, 1941, and it was closed from that date until the date when this answer was filed. We want to get the date of the filing of the answer.

Mr. Marcus: October 6th, 1941.

Mr. McKay: The only period it shows it was closed was from April to October in 1941.

The Court: It says closed as of the date of the taking of that interrogatory.

Mr. McKay: That is right.

[fol. 652] The Court: It does not appear what happened to it afterwards.

Mr. McKay: No.

Mr. Marcus: "Town. Corbin. Name of theatre. Hippodrome. Nature of interest. Lessee. Extent of interest. 100 per cent. Date acquired. November, 1938. Seating capacity. 824."

The Court: Is that the Hippodrome was acquired December, [illegible]8?

Mr. Marcus: November of 1938.

Mr. McKay: They were both acquired at the same time as part of the same deal.

Mr. Rogers: The Hippodrome and Kentucky were both acquired at the same time.

Mr. McKay: May we also read in the answer to the period closed, if any, it is blank.

The Court: That is the Hippodrome?

Mr. McKay: The Hippodrome.

Mr. Marcus: That is all.

Mr. Rogers: I would like to offer in evidence the three contracts that Mr. Marcus did not offer in evidence, that is, contract for the Viv Theatre, Corbin, Kentucky, dated [fol. 653] 9-1-39 with M. K. Murphy for Frank Capra releases for 1938-39 season, second run.

Mr. Marcus: Just a minute, Mr. Rogers. Why don't you read as to what picture?

Mr. Rogers: I will be happy to. Thank you for reminding me. It was a very good picture "You Can't Take it With You." A very good picture.

The Court: What do you mean by that, "You Can't Take it With You"?

Mr. Rogers: That was the name of the picture, and it was made from a great Broadway success play. It was a tremendous hit on Broadway as a play, and Frank Capra, the famous director, made a picture of it for Columbia Pictures.

I should like to have that marked in evidence.

(Thereupon the contract referred to was received in evidence and marked as Defendants' Exhibit D-22.)

The Court: Do the contracts state the date, how long after the first-run?

Mr. Rogers: Let me see what clearance there is on this. There does not seem to be a clearance on this.

Mr. Marcus: Your Honor will notice that is for 1938-39 picture. It so states in the contract.

[fol. 654] Mr. Rogers: There is nothing about clearance on this, your Honor. It merely says "second run."

I also wish to offer in evidence application bearing date September 1, 1939, approved September 8, 1939, for the picture, "Cavalcade" for the Viv Theatre made with Mr. M. K. Murphy.

The Court: With what Company?

Mr. Rogers: Also Columbia Pictures, sir. That was the Martin Johnson picture in which his wife Osa Johnson collaborated, and the title of that picture as "I Married Adventure."

(Thereupon the contract referred to was received in evidence and marked as Defendants' Exhibit D-23.)

The Court: I suppose the Company will have all of the contracts?

Mr. Rogers: Yes, but I thought inasmuch as we have these here we might as well offer them.

I also wish to offer in evidence application contract, date September 1, 1939, and approved September 8th, 1939, with M. K. Murphy for the Viv Theatre in Corbin, Kentucky, second-run, for Frank Capra's picture, "Mr. Smith Goes to Washington."

[fols. 655-656] (Thereupon the contract referred to was received in evidence and marked as Defendants' Exhibit D-24.)

Mr. Marcus: That is all, Mr. Murphy.

Mr. Rogers: That is all, Mr. Murphy.

I would like to now formally move to strike from the testimony various conversations which this witness claims to have had with persons unknown, persons unidentified, and with reference to conversations generally upon which no foundation has been laid for admission or authority, and also on the ground that his testimony deals with purely local transactions.

The Court: I have already taken action on these questions, anyway. Denied.

We will adjourn now until tomorrow morning at 10 o'clock.

(Whereupon, at 5:25 o'clock P. M., an adjournment was taken until Tuesday, June 6th, 1944, at 10 o'clock.)

[fol. 657] UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NEW YORK

Civil Action No. 224

UNITED STATES OF AMERICA,

vs.

SCHINE CHAIN THEATRES, INC., et al.

Trial continued before the Honorable John Knight, United States District Judge, without a Jury, United States Court House, Buffalo, New York, Tuesday, June 6, 1944, at 10 o'clock A. M.

APPEARANCES:

Robert L. Wright, Esq., John F. Clagett, Esq., Harold L. Schilz, Esq., Albert Boggess, Esq., Special Assistants to

the Attorney General; Philip Marcus, Esq., and Milton Kallis, Esq., Special Assistants to the Attorney General, in behalf of the United States of America.

Edmund McCarthy, Esq., Attorney of Record; Willard S. McKay, Esq., Saul E. Rogers, Esq., Arthur J. Homans, Esq., Howard M. Antevil, Esq., and Seth Richardson, Esq., of Counsel for Defendants.

[fol. 658] PROCEEDINGS

Mr. Marcus: Have you been able to produce that agreement between Mr. Scott and the Schines?

Mr. Rogers: May it please the Court, in answer to that request I have a request to make, in view of the importance of the claims made. As your Honor will recall, they introduced in evidence yesterday what purported to be an agreement between Mr. Scott and the Schine Lexington Corporation and they claimed that possibly one or two—first he said one sheet was missing or possibly two sheets were missing. Theirs was the original document. They claimed they got those documents—there were three or four documents all fastened together—from Mr. Leon Scott, not from Mr. Grover Scott. Mr. Grover Scott testified that when he really made a gift of the theatre to his son he turned all the documents over to his son. Inasmuch as Leon Scott is the one who was subpoenaed I wish to find out from Leon Scott just what condition these papers were in when he turned these papers over to the plaintiff, before we proceed any further. That is the original document: I want to know [fol. 659] and I think we are entitled to know——

Mr. Marcus: I do not see the purpose of this.

Mr. Rogers: What I want to know is what Mr. Leon Scott turned over to you. I want to know what condition it was in when it was turned over.

The Court: You have got the copy. What difference does it make?

Mr. Rogers: Except for this, may it please the Court; I want to be sure that the copy I have got here——

The Court: The one you retained?

Mr. Rogers: No, this is not an executed copy.

The Court: You got it from your files?

Mr. Rogers: We were searching through our files. We were searching for the original. We did not find the original. We found a copy of that contract. I want to know whether or not the paper they produced yesterday was in

the condition yesterday as it was when they received it, and if they have the full documents——

The Court: Where is Leon Scott?

Mr. Rogers: He is right here. He is in the court room.

Mr. Wright: Why don't you ask him?

The Court: Mr. Scott has testified he gave it to Leon Scott.

[fol. 660] Mr. Rogers: A long time ago. I don't know. I want to be sure of what Leon Scott gave them. He is here under subpoena.

The Court: All right.

[fol. 661] Leon Bernard Scott, a witness called by and on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

The Court: Proceed, Mr. Rogers. Your witness.

Direct examination.

By Mr. Rogers:

Q. Mr. Scott, do you recall having—may I have that exhibit that you have got there?

The Court: Isn't the copy here?

Mr. Marcus: I have the exhibit in a folder. Mr. Schilz went down to get them.

Mr. Wright: Show him the copy.

Mr. Rogers: I would rather operate with your documents for the moment.

(A pause.)

By Mr. Rogers:

Q. In the meantime I wish to put a few preliminary questions to Mr. Scott. Mr. Scott, you are here as a witness under subpoena by the plaintiff, are you not?

A. Yes.

Q. You have been subpoenaed by the defendants, have you?

A. No, sir.

Q. Do you recall turning over certain documents to [fol. 662] plaintiff's attorneys on Saturday?

A. Yes, sir.

Q. And to whom did you turn them over?

A. To Mr. Marcus.

Q. To Mr. Marcus?

A. That is right.

Q. With reference to the agreement dated November 30th, 1938, between G. C. Scott and Schine Lexington Corporation, were there any pages missing from that paper when you turned it over?

A. Not that I know of. I saw him go through them and he said, "These are what we want."

The Court: Not that you know of, is that your answer?

The Witness: Not that I know of, that there were any pages missing until Monday.

The Court: What is that?

The Witness: Monday he asked me where the missing page was. Saturday he said, "These are what I want."

The Court: Do you know whether all the pages were in there Saturday?

The Witness: Do I know? I turned them over to him.

The Court: Were they all in there?

The Witness: They were in there when I brought them up. He asked me to bring the papers to him and he picked out [fol. 663] a bunch—[redacted] gave me back all but three.

Mr. Marcus: (Handing Plaintiff's Exhibit P-21 to Mr. Rogers). Do you want this, too?

Mr. Rogers:

Q. I show you these papers, Mr. Scott, which are marked Plaintiff's Exhibit P-21, and I show you this contract of December 2nd, 1938, and I ask you were there any papers missing from that contract when you gave them to Mr. Marcus last Saturday?

A. I will say that there were not any papers missing.

The Court: Say what?

The Witness: There were not papers missing.

Mr. Rogers: Now, I call upon the plaintiff to produce the balance of that original contract.

Mr. Marcus: Let me take the witness first, Mr. Rogers. I gather that Mr. Rogers is now charging me with having taken one or more of the papers.

Mr. Rogers: I am not charging anybody with doing anything. You may have mislaid it or lost it. You had it.

Mr. Marcus:

Q. Mr. Scott, when you came into the office on Saturday, did you have a folder of papers with you?

A. I did.

[fol. 664] Q. Did you take out paper by paper and give those papers to me?

A. I took out contract by contract. I gave you the entire bunch which you went through.

Q. And I took three papers out of that file, did I not?

A. You took two or three. You said, "These are the documents I want."

Q. That is right. On Monday morning, that is yesterday, did you come into my office and did I ask you at that time where that missing page or pages might be?

A. Yes, sir.

Mr. Marcus: That is all, your Honor. I just don't see what Mr. Rogers has in mind. If he wants me to take the stand and testify that this is the document as I got it, I am willing to do so.

Mr. Rogers: Mr. Wright, don't you dare take papers off my desk.

The Court: Just a minute, now.

Mr. Rogers: I don't want Mr. Wright coming over to my table and take papers off my desk.

Mr. Wright: Your Honor, we are not trying Mr. Marcus. We are not trying Mr. Scott. We are trying to establish what the contents of the document was, and it seems to me [fol. 665] the quickest way is to have him identify the document and find out what the missing pages were. It seems to me that solves the problem.

The Court: We have another problem. The witness here states he gave it to counsel for the Government.

Mr. Rogers: Exactly.

The Court: That requires some explanation.

Mr. Wright: In any event we want to get at the ultimate issue, and that is what is on the missing pages.

The Court: First we have to show that the original is lost.

Mr. Rogers: Exactly.

The Court: Mr. Scott—is that your name?

The Witness: Yes, sir.

By the Court:

Q. Did you look at those papers, the separate sheets of the letters and agreement when you delivered it to Mr. Marcus?

A. When I brought them up there.

Q. Did you look at the paper itself, the different sheets?

A. He was looking at them then.

Q. Did you yourself know whether that was completed, all the sheets were in there, when you gave it to Mr. Marcus? [fol. 666] Do you know that?

A. He went through them page by page.

Q. I don't ask you that. What I want to know is do you know?

A. I was sitting like this (indicating). I couldn't tell whether the pages were absolutely there unless I was over his shoulder.

Q. Then you didn't see those pages you mean, yourself? Did you see it?

A. They were stapled together.

Q. I don't ask you that. Do you know whether those papers were there?

A. I didn't see them.

The Court: All right, that is all.

[fol. 667] Mr. Marcus: If your Honor will require any further proof I would like to go on the stand.

The Court: I think so. Swear Mr. Marcus.

Mr. Rogers: Mr. Marcus does not have to be sworn. I will take his statement without any oath.

The Court: Swear him.

PHILIP MARCUS, a witness called by and on behalf of the Plaintiff and having been first duly sworn was examined and testified as follows:

The Witness: Your Honor, Saturday morning Mr. Leon Scott came into my office with a folder of documents, which we had subpoenaed, and at that time he handed to me, paper-by-paper, a number of documents, which I skimmed through and selected three documents. That document there in its present condition is the document which Mr. Leon Scott handed to me, and after going through those documents I noticed that the pages were missing, and on

Monday morning, that is yesterday morning, prior to the time the trial started, Mr. Leon Scott came into my office and at that time I asked him where those pages were and [fol. 668] he did not know.

The Court: You admit that Mr. Scott gave you the copy that you have retained?

The Witness: Mr. Scott gave me this copy here (indicating).

Mr. Rogers: This copy (indicating) came out of our files that I produced. Do you want that copy (handing to Mr. Marcus)?

The Court: Was there not a duplicate original of this document?

Mr. Rogers: Yes, sir. We have not been able to find the duplicate original.

The Court: That was in your possession?

Mr. Rogers: Yes. We haven't got it in Buffalo. It may be in Gloversville.

Mr. Wright: They were subpoenaed to produce here all of the agreements they had made with anybody not to compete.

Mr. Rogers: Not to compete?

Mr. Wright: That is what the subpoena says.

Mr. Rogers: Where do you find anything in that agreement not to compete?

Mr. Wright: I do not know whether it is in there or not. We wanted to get a look at it.

Mr. Rogers: There it is (indicating).

Mr. Marcus: I have no objection to having this substituted [fol. 669] for this agreement, subject to your substituting a duplicate original if you find it, Mr. Rogers.

The Court: Received.

(Thereupon the agreement between G. C. Scott and L. L. G. C. S. and Schine Lexington Corporation, dated November 30, 1938, referred to was received in evidence and marked Plaintiff's Exhibit P-25.)

The Court: We will proceed with the former witness.